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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARD MAGNESS,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 07-73446

Tax Ct. No. 9832-06L

MEMORANDUM\*

Appeal from a decision of the  
United States Tax Court  
Diane L. Kroupa, Judge, Presiding

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Leonard Magness appeals pro se from the tax court's summary judgment permitting the Commissioner of Internal Revenue ("Commissioner") to proceed

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

with an action to collect his federal income tax liabilities for 2001 and 2002. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the tax court's legal conclusions and for clear error its findings of fact. *Charlotte's Office Boutique v. Comm'r*, 425 F.3d 1203, 1211 (9th Cir. 2005). We review de novo a grant of summary judgment. *Miller v. Comm'r*, 310 F.3d 640, 642 (9th Cir. 2002). We affirm.

The tax court properly determined that Magness was precluded from challenging the tax liabilities for 2001 and 2002 because he had notice of the deficiencies but failed to petition the tax court for a deficiency hearing. *See* 26 U.S.C. § 6330(c)(2)(B) (permitting challenge to the underlying tax liability if the taxpayer “did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability”); *United States v. Zolla*, 724 F.2d 808, 810 (9th Cir. 1984) (holding that Postal Form 3877 is highly probative and is sufficient, in the absence of contrary evidence, to show that the notice of deficiency was properly made).

Magness's contention that he was improperly denied a face-to-face collection due process (“CDP”) hearing is unavailing because “[a] CDP hearing may, but is not required to, consist of a face-to-face meeting.” 26 C.F.R. § 301.6330-1(d)(2)(A-D6). Further, Magness failed to respond to requests to

provide detailed documentation as to the issues he wished to raise at the hearing and failed to raise a valid challenge to respondent's proposed levy. *See* 26 C.F.R. § 301.6330-1(d)(2)(A-D7) (stating that a taxpayer who presents relevant, non-frivolous arguments in the CDP hearing request will ordinarily be offered the opportunity for a face-to face conference).

Magness's remaining contentions are unpersuasive.

**AFFIRMED.**