

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-1225

September Term, 2026

USTC-1886-15

Filed On: September 30, 2026

Joseph J. Zajac, III,

Appellant

v.

Commissioner of Internal Revenue,

Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Millett, Walker, and Childs, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States Tax Court and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the Tax Court’s order entered July 31, 2025, be affirmed. First, appellant has not shown that the Tax Court erred by declining to consider his allegations of unlawful acts by the Internal Revenue Service (“IRS”) prior to its issuance of a notice of deficiency. As a general rule, the Tax Court will not look behind a deficiency notice. See Greenberg’s Express, Inc. v. Comm’r of Internal Revenue, 62 T.C. 324, 327 (1974). While appellant correctly notes that the Tax Court recognizes an exception to that general rule “when there is substantial evidence of unconstitutional conduct on [the agency’s] part and the integrity of [the Tax Court’s] judicial process would be impugned if [the Tax Court] were to let [the agency] benefit from such conduct,” id. at 328, appellant has made no such showing here.

Second, appellant has largely forfeited any challenge to the Tax Court’s decision to sustain in part the IRS’s claimed deficiencies by not adequately addressing the issues in his opening brief. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004); see also SEC v. Banner Fund Int’l, 211 F.3d 602, 613 (D.C. Cir. 2000) (“asserted but unanalyzed argument[s]” are forfeited (internal quotation marks omitted)). The challenges appellant has preserved lack merit.

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Appellant argues that he should have been allowed to exclude from income the entirety of a settlement payment he received for claims against a town government. But the exclusion he invokes is for damages received “on account of personal physical injuries or physical sickness,” 26 U.S.C. § 104(a)(2), including “damages for emotional distress attributable to a physical injury or physical sickness,” 26 C.F.R. § 1.104-1(c)(1). And appellant does not dispute the Tax Court’s authority to determine that only a portion of a settlement payment falls within this exclusion. Contrary to appellant’s argument here, some of the claims he released as part of the settlement at issue (e.g., his claims for defamation and unlawful seizure of property) plainly did not involve physical injury or physical sickness. Consequently, the Tax Court did not clearly err by concluding that a portion of the settlement proceeds was not excludable from income.

Appellant also argues that he should have been allowed a deduction for moving expenses. But he was ineligible for such a deduction unless he could show that he “perform[ed] services as a self-employed individual on a full-time basis” for at least 39 weeks in the first year following his move. 26 U.S.C. § 217(c)(2)(B). In contending that he meets the requirement, appellant relies in part on weeks he spent looking for work, yet he provides no support for his assertion that such time counts as “perform[ing] services” for purposes of satisfying that requirement. In any event, the Tax Court additionally concluded that appellant had not adequately substantiated his moving expenses. And appellant has forfeited any challenge to that independent ground for disallowing the moving-expenses deduction. See Totten, 380 F.3d at 497; Banner Fund Int’l, 211 F.3d at 613.

Third, appellant has shown no abuse of discretion by the Tax Court in allowing testimony and documentary evidence regarding the imposition of accuracy-related penalties. Nor did the Tax Court clearly err in finding, based on that evidence, that the IRS properly and timely obtained supervisor approval for the penalties. See Green Gas Del. Statutory Trust v. Comm’r of Internal Revenue, 903 F.3d 138, 146 (D.C. Cir. 2018); see also 26 U.S.C. §§ 6662(b)(2), 6751(b)(1).

To the extent that appellant has raised additional arguments not specifically addressed in this judgment, those arguments either lack merit or are insufficiently developed and thus forfeited. See Banner Fund Int’l, 211 F.3d at 613.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam