

Checkpoint Contents

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American Federal Tax Reports (Prior Years)

1998

AFTR 2d Vol. 82

82 AFTR 2d 98-6663 - 82 AFTR 2d 98-6465

BOATNER v. COMM., 82 AFTR 2d 98-6657 (164 F3d 629), Code Sec(s) 165; 166; 1221, (CA9), 9/22/1998


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BOATNER v. COMM., Cite as 82 AFTR 2d 98-6657 (164 F3d 629), Code Sec(s) 165; 166; 1221, (CA9), 9/22/1998

Nathan BOATNER, PETITIONER-APPELLANT v. COMMISSIONER of Internal Revenue, RESPONDENT-APPELLEE.

Case Information:

[pg. 98-6657]

Code Sec(s):	165; 166; 1221
Court Name:	U.S. Court of Appeals, Ninth Circuit,
Docket No.:	Docket No. 97-71418,
Date Decided:	9/22/1998.
Prior History:	Tax Court, (1997)  TC Memo 1997-379 [1997 RIA TC Memo ¶97,379], RIA TC Memo ¶97379, 74 CCH TCM 342 (opinion by Vasquez, J.), affirmed.
Tax Year(s):	Year 1992.
Disposition:	Decision for Govt.
Related Proceedings:	

	Related Proceedings at Boatner v. Commissioner ,  T.C. Memo. 1997-379 [1997 RIA TC Memo ¶[97,379] .)
Cites:	82 AFTR 2d 98-6657, 164 F3d 629, 98-2 USTC ¶ 50,785.

HEADNOTE

1. Losses—capital vs. ordinary—securities and commodities trading—dealer, trader or investor—equitable estoppel.

[pg. 98-6658]



Tax Court properly held that attorney's wholly owned S corp.'s net losses from securities transactions were capital, not ordinary: taxpayer was investor, not trader or dealer; and IRS wasn't equitably estopped from reclassifying losses as capital where it hadn't made affirmative misrepresentations regarding classification of taxpayer's income and losses for tax years preceding year at issue.

Reference(s): ¶ 1655.202(20); ¶ 12,215.23(20); ¶ 74,338.533(10); ¶ 1665.110(75); ¶ 1665.133(5) Code Sec. 165; Code Sec. 166; Code Sec. 1221

OPINION

United States Court of Appeals for the Ninth Circuit.

Before: O'SCANLAIN, FERNANDEZ and TASHIMA, Circuit Judges.

Nathan Boatner appeals pro se a tax court judgment ordering him to pay a deficiency for tax year 1992. We have jurisdiction pursuant to  26 U.S.C. section 7482(a). We review the Tax Court's conclusions of law de novo and factual findings for clear error. See *Harbor Bancorp & Subsidiaries v. Commissioner*,  115 F.3d 722, 727 [79 AFTR 2d 97-2971] (9th Cir. 1997), cert. denied, 118 S.Ct. 1035 (1998). We affirm.

[1] Boatner contends that (1) because he was a trader and not an investor, net losses from securities transactions incurred by his wholly owned corporation are ordinary losses and not capital losses, and (2) because the **Commissioner** accepted **Boatner's** reporting of securities transactions as ordinary income and loss on his returns for 1987 through 1990, the Commissioner was estopped from classifying the 1992 losses as capital losses. These contentions lack merit.

The Tax Court's finding that Boatner was an investor and not a trader or a dealer was not clearly erroneous. See *Harbor Bancorp*, 115 F.3d at 727; *Purvis v. Commissioner*, 530 F.2d 1332, 1334 [37 AFTR 2d 76-968] (9th Cir. 1976) (per curiam).

Also not clearly erroneous was the Tax Court's finding that the Commissioner made no affirmative misrepresentations regarding the classification of Boatner's income and losses for the tax years preceding 1992. See *Harbor Bancorp*, 115 F.3d at 727. Consequently, the Tax Court properly concluded that equitable estoppel did not bar the **Commissioner's** treatment of **Boatner's** 1992 net losses from securities transactions as capital losses. See *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180, 183 [50 AFTR 1967] (1957); *Cadwalder v. United States*, 45 F.3d 297, 299-300 (9th Cir. 1995).

Affirmed.

Submitted September 14, 1998. **

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Consequently, Boatner's request for oral argument is Denied.

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