

UNITED STATES TAX COURT
Washington, D.C. 20217

GERNOT AND HELGA RUTH MUELLER,

Petitioners,

v.

Docket No. 532-89S

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its T.C. Summary Opinion 1991-61, filed March 4, 1991, it is

ORDERED AND DECIDED that there are no deficiencies in income taxes due from petitioners for the taxable years 1985 and 1986.

(Signed) Helen A. Buckley

Helen A. Buckley
Special Trial Judge

Entered: MAR 6 1991

T.C. Summary Opinion 1991-61

UNITED STATES TAX COURT

GERNOT AND HELGA RUTH MUELLER, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 532-89S.

Filed March 4, 1991.

Patrick H. Dwyer, for the petitioners.

Bridgette M. Gibson, for the respondent.

BUCKLEY, Special Trial Judge: This case was heard pursuant to section 7463.¹ Respondent determined deficiencies in petitioners' Federal income tax for the years 1985 and 1986 in the respective amounts of \$1,381.00 and \$1,292.61. The sole issue for resolution is whether petitioner wife timely filed her

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Unless otherwise indicated, all section references are to the Internal Revenue Code as amended and in effect for the period at issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

application for exemption from self-employment taxes in accordance with section 1402(e).

Some of the facts have been stipulated and are so found. The stipulation of facts and accompanying exhibits are incorporated herein by this reference. Petitioners are husband and wife and filed joint Federal income tax returns for the years in issue. They resided in Oregon House, California, at the time they filed their petition. Hereafter, reference to petitioner in the singular denotes Helga Ruth Mueller.

In November 1972, the Fellowship of Friends, Inc., a religious denomination, commissioned petitioner as a minister. During 1973 and each subsequent year through 1986, petitioner performed her ministerial duties with the church and reported her earnings therefrom. Sometime in 1973, petitioner and her then husband, Mr. Ronald Miles Barth, also a minister of the church, were advised by several church members that they could apply to the Internal Revenue Service (IRS) for an exemption from the self-employment tax they otherwise were subject to as ministers. Mr. Barth handled the preparation and filing of tax forms for himself and petitioner during the years 1973 through 1976 (they were separated in 1977 and divorced in 1978). A factual dispute exists between petitioner and respondent as to whether Mr. Barth filed on behalf of petitioner a Form 4361 (Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners) with the IRS in 1973; petitioner maintains Mr. Barth did, respondent

maintains he did not. At that time, petitioner and Mr. Barth resided in Los Angeles, California. Neither petitioner nor Mr. Barth is now able to produce copies of the Forms 4361 they contend were filed in 1973.

Beginning in 1973 or 1974 and for each subsequent year through 1986, petitioner neither reported nor paid self-employment tax on her earnings received as a minister in the church. In 1986, while petitioners were residing in Riverside, Illinois, they were contacted by the Kansas City, Missouri, Internal Revenue Service Center and told that that office did not have a Form 4361 on file for petitioner and that one should be filed. Petitioner did not believe her exempt status was being challenged at that time; she believed that the IRS was merely asking for a second Form 4361 for their records. Petitioner prepared a new Form 4361 on March 26, 1986, and forwarded it to the IRS. The IRS disapproved her application and returned it with a letter dated December 23, 1987, stating she did not qualify for exempt status because she had untimely filed for the exemption.

On November 8, 1988, respondent mailed petitioners a statutory notice of deficiency in their 1985 Federal income tax and on October 4, 1988, mailed a notice of deficiency respecting their 1986 tax. For both tax years, the entire deficiency is attributable to respondent's determination that petitioner was subject to the self-employment tax, as a result of petitioner failing to file a timely application for exemption.

Section 1401 imposes a tax on the self-employment income of every individual. Generally, self-employment income refers to net income earned from carrying on a trade or business as opposed to wages earned by an employee. Sec. 1402. However, unless a commissioned minister of a church obtains an exemption pursuant to section 1402(e), the compensation earned as a minister is subject to self-employment tax. Sec. 1402(c)(4).

To obtain an exemption, the taxpayer must file a Form 4361 application with the IRS. Sec. 1402(e)(1); Sec. 1.1402(e)-2A, Income Tax Regs. The application must be filed by the later of the two times prescribed in section 1402(e)(3), which for our purposes was the due date of the return for the second taxable year for which the applicant had ministerial earnings of \$400 or more. The exemption is effective for the first taxable year in which the recipient had ministerial earnings of \$400 or more and for all succeeding taxable years. Sec. 1402(e)(3).

Petitioner argues that she timely applied for an exemption in 1973. We have found as fact that 1973 was the first year petitioner received earnings as a minister; therefore, if as she contends, her former husband filed the Form 4361 in 1973, the time requirement of section 1402(e)(3) was satisfied.

Petitioner's former husband, Mr. Barth, testified that he recalls preparing the Forms 4361 for both himself and petitioner close in time to when he was advised by church members they could apply for exempt status in 1973. He provided the name of one of these church members and recalled that she was a bookkeeper or

accountant. He gave uncontroverted testimony of his recollection of what the form looked like at the time. Though he could not recall physically placing the forms in the mail, he was certain they were sent separately from the filing of tax returns. He believes he would have sent them to the Fresno, California, Internal Revenue Service Center. He further recollected receiving nothing in response from the IRS and therefore believed he and his then wife, petitioner, had received exempt status. He did not retain copies of the Forms 4361 because in his words he was "naive."

Petitioner also testified to the 1973 discussions with church members regarding application for exemption. She stated that Mr. Barth prepared the application forms. Noting that because they had relocated several times in the Los Angeles area during that time, she could not recall where she was when she signed the form. She added that she does recollect the incident because of the importance it was to her at the time.

Respondent offered into evidence a memorandum prepared by a senior tax examiner at the Fresno, California, Internal Revenue Service Center certifying she conducted an appropriate document search in July and August of 1989 and found only petitioner's March 1986 Form 4361 was on file.

Petitioners bear the burden of proving respondent's determination incorrect. Rule 142(a). Here we are quite simply confronted with determining which side's version of fact is accurate. We have had the opportunity at trial to observe the

demeanor of petitioner and her witness. We are impressed with the apparent candor with which they testified and find them particularly credible. See, e.g., Elrod v. Commissioner, 87 T.C. 1046, 1073 (1986); Wisconsin Psychiatric Services v. Commissioner, 76 T.C. 839, 848 (1981). We find that petitioner offered sufficient evidence of the filing of Form 4361 in 1973 to shift the burden of going forward to respondent. Respondent provided evidence that no Form 4361 was on file for petitioner at the IRS prior to the one dated March 1986. This fact alone is not dispositive. See Holland v. Commissioner, T.C. Memo. 1983-717; Kinney v. Commissioner, T.C. Memo. 1980-299. While it raises the inference that a Form 4361 was not filed by petitioner in 1973, it equally suggests the possibility that the document, being among a plethora of documents handled by IRS service centers, was simply misplaced, especially since many years had elapsed from the time petitioner claims to have filed it to the time a diligent search for it was made.

We find that petitioner timely filed an application for exemption from self-employment tax.

Reviewed and adopted as the report of the Small Tax Case Division.

Decision will be entered
for the petitioners.