

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 22 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DAVID R. MILLS and MORENA I.  
MILLS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 09-72165

Tax Ct. No. 3441-08

MEMORANDUM\*

Appeal from a Decision of the  
United States Tax Court

Submitted July 12, 2011\*\*

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

David R. Mills and Morena I. Mills appeal pro se from the Tax Court's decision sustaining a notice of federal income tax deficiency for tax years 2004 and 2005 and imposing a penalty. We have jurisdiction under 26 U.S.C. § 7482(a)(1).

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo the Tax Court's conclusions of law and for clear error its factual findings. *Smith v. Comm'r*, 300 F.3d 1023, 1028 (9th Cir. 2002). We affirm.

The Tax Court properly sustained the Internal Revenue Services' deficiency determinations based on the Mills' original returns. *See Fayeghi v. Comm'r*, 211 F.3d 504, 507 (9th Cir. 2000) (IRS may, as a matter of internal administration, decide to accept amended returns for limited purposes, but it is not statutorily required to do so, or to treat amended return as superseding an original return).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

The Mills' remaining contentions are unpersuasive.

**AFFIRMED.**