

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 12 2020

FOR THE NINTH CIRCUIT

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

EMILIO EXPRESS, INC.,

No. 19-70923

Petitioner-Appellant,

Tax Ct. No. 14949-10

v.

MEMORANDUM*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

EMILIO TORRES LUQUE; GABRIELA
MEDINA,

No. 19-70928

Petitioners-Appellants,

Tax Ct. No. 14962-10

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Appeals from a Decision of the
United States Tax Court

Submitted June 2, 2020**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

In these consolidated appeals, Emilio Torres Luque, Gabriela Medina, and sole proprietorship Emilio Express, Inc., appeal pro se from the Tax Court's orders on cross-motions for summary judgment upholding the Commissioner of Internal Revenue's determinations of tax deficiencies for tax years 2003, 2004, and 2005 for Torres Luque and Medina, and tax year 2003 for Emilio Express, Inc. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo. *Johnston v. Comm'r*, 461 F.3d 1162, 1164 (9th Cir. 2006). We affirm.

The Tax Court properly granted summary judgment for the Commissioner because petitioners failed to raise a genuine dispute of material fact as to whether the U.S.-Mexico Tax Treaty entitled them to relief from their United States tax liability, even assuming Torres Luque and Medina's Mexican residency under the treaty. *See* Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Mex.-U.S., Sept. 18, 1992, S. Treaty Doc. No. 103-7 (establishing relief for taxpayers potentially subject to double taxation and related issues); *Higgins v. Smith*, 308 U.S. 473, 477 (1940) ("A taxpayer is free to adopt such organization for

^{**} The panel unanimously concludes these cases are suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his affairs as he may choose and having elected to do some business as a corporation, he must accept the tax disadvantages.” (footnote omitted)); *cf.* *UnionBanCal Corp. v. Comm’r*, 305 F.3d 976, 986 (9th Cir. 2002) (noting the similar U.S.-U.K. Tax Convention allows both sovereigns to tax residents of the other presuming rules preventing double taxation are followed).

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).

AFFIRMED.