No. 19-71410

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

APRIL MOTTAHEDEH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE DECISION OF
THE UNITED STATES TAX COURT,
HON. RICHARD T. MORRISON
(Tax Court Case No. 22039-11)

APPELLANTS' REPLY BRIEF

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STATEMENT OF RELATED CASE

The US Tax Court case being appealed here was a joint case of husband and wife, APRIL and PEYMON, that was heard in the US Tax Court, where the Court ruled against APRIL and PEYMON and then split the total taxes in half between APRIL and PEYMON, despite the fact that APRIL and PEYMON had at time of marriage signed a document that specifically disavowed the California's community property laws and chose to treat each spouses, income, assets and liabilities, as sole and separate property, income, asset and liabilities of each of them.

Husband PEYMON is simultaneously filing his Reply Brief in this Court, in Case No. 19-71432. The arguments of PEYMON's case about the IRS's failure to carry IRS's burden of proof as required per 26 USC §7491(b) apply to the instant Appeal as well.

APRIL prays the Court to refer to the arguments in PEYMON's Appeal Brief submitted previously and PEYMON'S Reply Brief which is filed simultaneously with this Reply Brief.

APRIL chose to file a separate appeal from the adverse decision of the US Tax Court, so that APRIL could make her separate arguments about the US Tax Court's erroneous application of community property laws on APRIL which led to

an adverse finding against APRIL. To save the Court's scarce judicial resources, APRIL incorporates the arguments in PEYMON's briefs by reference in full.

Reply brief of Appellant

Appellant herein April Mottahedeh (APRIL) hereby submits this reply to the Brief of the Appellee (ROB.)

April is allowed to incorporate by reference arguments of PEYMON's related case and the Court should consider them in this appeal

ROB[1] p. 27 claims that Ninth Circuit Rule 28-1(b) prohibits by incorporation the arguments that PEYMON presented in PEYMON's Opening Brief and cites Warwick v. University of Pac., 585 F. App'x 412 (9th Cir. 2014) that "WE [this Court] do not consider issues and arguments incorporated by reference on appeal."

Ninth Circuit Rule 28-1(b) states: "*Parties must not append or incorporate by reference briefs* ***submitted to the district court or agency or this Court in a prior appeal****, or refer this Court to such briefs for the arguments on the merits of the appeal.*" Emphasis added. In this case, APRIL is NOT incorporating by

[1] "ROB" refers to the Reply Opening Brief of Appellee.

reference briefs that were "*submitted to the district court or agency or this Court in a prior appeal.*"

APRIL is incorporating by reference the Opening brief and reply brief of her husband PEYMON. APRIL AND PEYMON are subjects of the same Tax Court trial, same record and the Memorandum of the Court inherently mingled the cases of APRIL AND PEYMON, since the IRS and the Tax Court chose to lump APRIL's tax case with that of PEYMON. PEYMON'S arguments are also APRIL'S ARGUMENTS. Doing so also saves this Court's scarce judicial resources.

Therefore, Ninth Circuit Rule 28-1(b) does not prohibit APRIL from incorporating by reference the arguments that are made in PEYMON's Opening Brief. *Warwick, Supra*, does not apply here because Warwick was trying to incorporate issues and arguments that Warwick had made in the District Court, which is not the case in APRIL's case.

This court can and should consider the arguments that are made in PEYMON's Opening Brief and Reply brief which will show that the IRS failed to refute any point of fact or law that PEYMON has brought to the attention of this Court and practically has conceded this appeal to APRIL AND PEYMON.

Therefore, APRIL will focus this brief on issues that are applicable to April's case. IRS is assessing these taxes for years 2001 through 2006 on April

based on IRS' claim that APRIL is half owner of Freedom Law School and therefore half of revenues, income, taxes and penalties of PEYMON are APRIL's revenues income taxes and penalties.

1) APRIL has no ownership interest in Freedom Law School

From the beginning, ROB starts making baseless statements that are not supported by the record and are refuted by the record. To start with ROB p. 4 claims: "*Peymon with the assistance of his wife, April Mottahedeh, runs Freedom Law School. (1-SER-10)*".[2]

1-SER-10 reference above is not a citation to the record. It is citation to the Tax Court's unsupported statement, which is not a fact. Therefore, ROB claim that "*Peymon with the assistance of his wife, April Mottahedeh, runs Freedom Law School*" is baseless, unsupported by the record and should be set aside by this Court. Even worse, this baseless statement of IRS, is repeated ad nauseum in ROB. See 2-SER-215–218.

2-SER-215 states this undisputed fact: "*Freedom Church is expanding. Some of you are not aware that the Freedom Law School (F.L.S.) is one of the educational arms of Freedom Church (F.C.)*"

Therefore, this court should completely ignore the baseless language throughout ROB about APRIL running Freedom Law School or APRIL being a

[2] "SER" refers to the Supplemental Excerpts of record that were filed by IRS.

joint partner in Freedom Law School with PEYMON, since Freedom Law School is an educational arm of Freedom Church.

2) The Community Property Agreement (CPA) does not allow for community property unless it is conclusively shown that comingling of property was on purpose for benefit and agreement of both spouses. Therefore, APRIL has no ownership in Freedom Law School or its receipts.

Even assuming Arguendo that Freedom Law School is not owned by Freedom Church, and further assuming that PEYMON owns Freedom Law School, below are the reasons why Freedom law School and its receipts cannot be community property of APRIL and PEYMON, and APRIL has no ownership of Freedom Law School, or any shares of Freedom Law School's receipts, income, taxes or penalties.

The fifth page of the Community Property Agreement (CPA) of APRIL and PEYMON (2-SER-102) under the heading "*Commingling of Separate and Community Property*" heading states:

"***The parties signatory hereto agree that there will be no commingling of their separate property with the community property of the marital estate***. *Any incidental or inadvertent commingling of property shall not serve to nullify the*

intent of this agreement, unless and until it can conclusively be shown by either spouse or a third party, that such commingling of property was not incidental or inadvertent and was done so as to achieve favorable consideration for either of the parties signatory hereto, with the consent and knowledge of the other party, with respect to the community property laws of the State of California and contrary to the intent of this agreement." Emphasis added.

It is undisputed that "*Since at least 1999, the Freedom Law School has organized conferences attended by hundreds of people*." (1-SER-10) It is also undisputed that APRIL AND PEYMON married on June 24, 2001. (1-SER-28 footnote 19) (2-SER-102), which is at least 2 years after Freedom Law School had been in operation without APRIL having anything to do with PEYMON or Freedom Law School.

Assuming arguendo that Freedom Law School is a separate property of PEYMON since 1999, per the express terms of the CPA, "*there will be no commingling of their separate property with the community property of the marital estate.*" Therefore Freedom Law School, as separate property of PEYMON, cannot become community property of APRIL.

In addition, even if "*incidental or inadvertent commingling of property*" takes place, as the IRS is contending has happened here, such "*incidental or inadvertent commingling of property* ***shall not serve to nullify the intent of this***

***agreement**, unless and until it can **conclusively be shown** by either spouse or a third party, that such commingling of property **was not incidental or inadvertent** and was done so as **to achieve favorable consideration for either of the parties** signatory hereto, **with the consent and knowledge of the other party**, with respect to the community property laws of the State of California **and contrary to the intent of this agreement**.*" Emphasis added.

Not only such an "*incidental or inadvertent commingling of property*" cannot nullify this CPA and its intent to separate and keep the separate property of APRIL and PEYMON separate, IRS would have to have "*conclusively be shown*" that "*such commingling of property [such as Freedom Law School as alleged by IRS] was not incidental or inadvertent*" and furthermore, such comingling "*was done so as to achieve favorable consideration for either of the parties signatory hereto, with the consent and knowledge of the other party.*"

Clearly there is no evidence in the record that the alleged comingling of Freedom Law School receipts "*was not incidental or inadvertent*" and that it "*was done so as to achieve favorable consideration for*" APRIL or PEYMON "*with the consent and knowledge of the other party.*"

The Tax Court clearly erred by not noticing and not applying these provisions of the CAP in its Memorandum and Decision.

Therefore, there is no proof that APRIL had any community interest in

Freedom Law School or Freedom Law School's revenues. It was clear error for the Tax Court to rule that APRIL had a community property interest in Freedom Law School. It was clear error for Tax Court to assign half of the income that Tax Court had attributed to APRIL AND PEYMON.

It was clear error for the Tax Court to affirm taxes and the penalties that were allegedly sourced Freedom Law School and PEYMON on APRIL. Therefore, this Court should reverse the Tax Court MEMO and Decision and abate all of the taxes imposed by the Tax Court for years 2001 through 2006 on APRIL

WHEREFORE, inclusive of the above analysis, this Court should rule that APRIL had no Community Property interest in PEYMON's income and that the IRS failed to carry its burden of proof for using BLS. Therefore, all taxes and penalties for years 2001 through 2006 on APRIL should be abated.

Dated: June 14, 2022

Respectfully,

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CERTIFICATE OF SERVICE

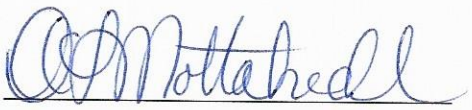
This is to certify that I electronically filed the foregoing with the Clerk for the United States Court of Appeals for the Ninth Circuit by emailing all documents to the clerk at prose-pleadings@ca9.uscourts.gov on the date listed below:

APPELLANT'S REPLY BRIEF

Appellant emailed the Clerk of Court as noted above and served Appellee by mailing the above described document on

June 14, 2022, by First Class addressed as follows:

CURTIS C PETT, Attorney
United States Department of Justice/ Tax Division
Appellate Section
P.O. Box 502
Washington, D.C. 20044



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Dated: June 14, 2022