

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3215

Van Roekel Farms, Inc.,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	Tax Court.
	*	
Commissioner of Internal Revenue,	*	[UNPUBLISHED]
	*	
Appellee.	*	

Submitted: June 21, 2001

Filed: June 25, 2001

Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and FAGG,
Circuit Judges.

PER CURIAM.

Van Roekel Farms, Inc. (Taxpayer) appeals the tax court's ruling upholding the Commissioner of Internal Revenue's decision that Taxpayer's Employee Stock Ownership Plan did not qualify under 26 U.S.C. § 401(a), and thus, the Taxpayer's related Employee Stock Ownership Trust was not exempt from income tax. Contrary to Taxpayer's argument that it paid "management fees" to its founder, Eugene Van Roekel, as an employee and not as an independent contractor, the tax court's order notes Taxpayer's concession that Van Roekel was an independent contractor and the

scant record before this court does not indicate that Taxpayer ever sought to prove otherwise. Indeed, the treatment of the management fees on the Taxpayer's and Van Roekel's tax returns show Van Roekel was an independent contractor. Having considered the record and the parties' briefs, we conclude the Taxpayer's argument is foreclosed by circuit precedent. See Howard E. Clendenen Inc. v. Commissioner, 207 F.3d 1071 at 1072-73, 1075 (8th Cir. 2000). We affirm on the basis of the tax court's opinion. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.