

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 11-1725

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Michael C. Hollen, D.D.S., P.C.,	*
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Appellant,	*
	*
v.	* Appeal from the United
	* States Tax Court.
	*
Commissioner of Internal Revenue,	* [UNPUBLISHED]
	*
Appellee.	*

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Submitted: November 10, 2011  
Filed: November 16, 2011

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Before MURPHY, ARNOLD, and BENTON, Circuit Judges.

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PER CURIAM.

Michael C. Hollen, D.D.S., P.C., appeals the tax court's<sup>1</sup> decision sustaining a determination by the Commissioner of Internal Revenue that its employee stock ownership plan did not qualify under 26 U.S.C. § 401(a), and that its employee stock ownership trust was not exempt under 26 U.S.C. § 501(a), for the plan year ending in 1987 and all subsequent plan years. Having carefully reviewed the record and the parties' arguments on appeal, we agree with the tax court's decision and find no basis for reversal. See Steel Balls, Inc. v. Comm'r, 69 T.C.M. (CCH) 2912, 2918-19 (1995) (Commissioner was "clearly within the allowable range of discretion" when he

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<sup>1</sup>The Honorable David Laro, United States Tax Court Judge.

recharacterized certain dividends as employer contributions), aff'd 89 F.3d 841 (8th Cir. 1996) (unpublished per curiam); see also Namyst v. Comm'r, 435 F.3d 910, 912 (8th Cir. 2006) (standards of review); Campbell v. Comm'r, 164 F.3d 1140, 1142 (8th Cir. 1999) (decisions of tax court are reviewed on same basis as decisions from civil trial before federal district court; taxpayer bears burden of proving that determination made by Commissioner was erroneous); cf. Stearns v. Hertz Corp., 326 F.2d 405, 408 (8th Cir. 1964) (in case involving appeal from civil action, affidavit produced for first time in reply brief appendix would not be considered because it was not presented to trial court; appeal is to be determined upon record below). Accordingly, we affirm. See 8th Cir. R. 47B.

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