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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MICHAEL PAUL REMLER;
PAULINE M. VELEZ,

Petitioners,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 06-72128

Tax Ct. No. 21868-03

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted October 22, 2007**

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Michael Paul Remler and his wife Pauline M. Velez, appeal pro se from the tax court's judgment in favor of the Commissioner of Internal Revenue holding that the Internal Revenue Service properly issued a notice of deficiency for tax years 1999 and 2000 because petitioners were not entitled to claim as deductions

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

monies spent on the special education of their autistic child because it was not a bona fide business activity entered into for profit. We have jurisdiction pursuant to 26 U.S.C. § 7482. We review for clear error the issue of whether a taxpayer engages in an activity with the requisite intent of making a profit. *Wolf v. CIR*, 4 F.3d 709, 712-13 (9th Cir. 1993). We affirm.

The tax court did not err by determining petitioners did not engage in the special education of their son with the primary intent of making a profit as defined by 26 U.S.C. § 183 after carefully analyzing nine factors and finding petitioners satisfied only one. *See* Treas. Reg. § 1.183-2(b) (stating the nine factors to be considered when assessing whether an activity is engaged in for profit); *Hill v. CIR*, 204 F.3d 1214, 1218 (9th Cir. 2000) (tax court's determination that petitioners lacked a profit motive after application of section 1.183-2(b) factors was not clearly erroneous despite demonstration of the potential for profit).

Moreover, petitioners' contention that the tax court erred by failing to apply the Individuals with Disabilities in Education Act ("IDEA") to their case is unavailing because their IDEA reimbursement did not establish that they engaged in the special education of their son for profit during the tax years at issue. *See* 26 U.S.C. § 183 (prohibiting deductions when activity is not engaged in for profit).

Petitioners' remaining contentions are also unpersuasive.

AFFIRMED.