

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5555

Summary Calendar

ERICH E. SCHLEIER and
HELEN B. SCHLEIER,

Petitioners-Appellees,

versus

COMMISSIONER OF
INTERNAL REVENUE,

Respondent-Appellant.

Appeal from a Decision of the United States Tax Court
(22909-90)

(June 21, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Erich E. Schleier received a settlement for back pay and liquidated damages under the Age Discrimination in Employment Act. 29 U.S.C. §§ 621-34. Schleier and his wife, Helen B., paid federal income taxes on the back pay but not on the liquidated damages. The government issued a statutory notice of deficiency for failure to pay taxes on the liquidated damages. The Schleiers responded

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

that they were entitled to a refund for the taxes they paid on the back pay. The United States Tax Court concluded that the entire settlement under the ADEA was excludable from Schleier's income pursuant to Section 104(a)(2) of the Internal Revenue Code. 26 U.S.C. § 104(a)(2). The government appeals. We have already decided the issue. Money recovered under the ADEA is excludable from income for the purposes of taxation. Purcell v. Sequin State Bank and Trust Co., 999 F.2d 950 (5th Cir. 1993). We AFFIRM.