

Case No. ____ - _____

IN THE SUPREME COURT OF THE UNITED STATES

CECILIA M. HYLTON

Petitioner - Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE

Respondent – Appellee.

PETITIONER CECILIA M. HYLTON'S APPLICATION FOR EXTENSION OF
TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Co-Counsel of Record for Petitioner Cecilia M. Hylton

TO THE HONORABLE JOHN G. ROBERTS CHIEF JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE JUSTICE
FOR THE FOURTH CIRCUIT COURT OF APPEALS

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully requests a 30-day extension of time, up to and including December 31, 2018, to file on behalf of Petitioner (Cecilia M. Hylton) a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review that court's decision in *Hylton v. Commissioner of Internal Revenue* (attached as Exhibit A). Cecilia M. Hylton's petition for panel rehearing and hearing en banc was denied on August 3, 2018 (attached as Exhibit B). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for writ of certiorari without extension will expire on November 1, 2018. This application is apparently one day late. Richard W. Craig, in his Declaration (attached as Exhibit C), declares and explains events that recently occurred relative to this application, which justifies its acceptance.

1. Background. There are approximately 150 published Tax Court memorandum decisions over the past 40 years dealing directly with the so-called "Hobby Loss Rule" of IRC Section 183 and horse activities. That number of IRC Section 183 cases dealing with the horse industry dwarfs the number of IRC Section 183 cases dealing with any other industry. The case involved Petitioner who, during the years here at issue, invested over \$11 million in her American Quarter Horse breeding and showing activity. The Commissioner of Internal Revenue (the "Respondent") asserted that such activity was not a business engaged in for profit

under IRC Section 183, but was a “hobby” engaged in primarily for pleasure. The Tax Court, in a published Opinion, T.C. Memo 2016-234, agreed with the Respondent that it was a “hobby.” On Petitioner’s appeal to the Fourth Circuit Court of Appeals (“Fourth Circuit”), that Court affirmed the Tax Court in the one paragraph *Per Curiam* finding (Exhibit A). Petitioner filed a Petition for Rehearing and Rehearing En Banc which was denied on August 3, 2018. This Application followed.

2. Oral Argument. In their respective Opening Briefs to the Fourth Circuit both parties requested oral argument, recognizing the complexity of the case. It was denied under highly questionable circumstances which Petitioner believes denied her due process of law under the Fifth Amendment to the U.S. Constitution. In addition to the amount involved (almost \$6 million in taxes and penalties, plus many years of interest), and aside from the fact that both parties had requested oral argument, there were still graver problems, as follows:

(a) Failure to Advise. Federal Rules of Appellate Procedure (“FRAP”), Rule Section 34(b), states that: “the clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side.” This directive was not followed by the Clerk’s office. Instead, the parties received the notification set forth in the letter of March 29, 2018 (attached as Exhibit D). Indeed, the next communication received by the Petitioner was Exhibit A, a one-paragraph *per curiam* decision.

(b) Failure to Record Proceedings. Rule 34 of the Federal Rules of Appellate Procedure (“FRAP”) obviously holds oral argument in esteem. Rule 34(a)(2) states that:

“Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agree that oral argument is unnecessary for any of the following reasons: (A) the appeal is frivolous; (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

These failures to follow simple procedural rules was a denial of due process because had the Petitioner been notified of the denial she would have immediately filed any and all documents necessary to reverse that flawed decision by the three-judge panel. It is no sound argument to state that she thereafter had a right to a “Rehearing and Rehearing *En Banc*.” Instead, the issuance of the opinion made highly unlikely any reversal on subsequent oral arguments. The horse had already left the barn. According to the Clerk’s office, the panel did not make any record of their proceedings including their review of the briefs or the record, nor any record of the vote taken and the reasons therefor.

3. Importance of This Case. The Tax Court decision in this case, fully affirmed by the 4th Circuit, including the draconian penalties added, will, by the very level of investment, clearly be a major part of the 150 cases dealing with IRC Section 183 and horse activities. And this will be true notwithstanding that it refutes the decisions of other Courts of Appeal as well as refuting the decisions of virtually every other one of those 150 published Tax Court decisions. For example,

aside from the unique size of the investment by Petitioner, there are at least five other sets of favorable facts unique to this case as compared to other cases ignored by the views of the Tax Court judge (and also now by the Fourth Circuit in its unarticulated basis for adoption of the Tax Court opinion). Among those other unique factors are the largest herd of horses ever owned by a petitioner who was found to lack profit motive; Petitioner's losses being due to an industry-wide depression confirmed by expert witnesses but never even mentioned by the Tax Court (nor by the Fourth Circuit). Nor did the Tax Court (or the Fourth Circuit) discuss Petitioner's unique businesslike response to those depressed market by reducing her 109-horse herd by more than 50 percent. There was also her unique move, following expert advice, of the great majority of her horses from her Virginia farms and residence to professional establishments in Texas over 1,000 miles distant for marketing purposes (which horses she visited only a few days each year, hardly the practice of a "hobbyist"). She also devoted more time to the activity (40 hours per week) as any other taxpayer and she left a full-time position as a real estate executive to do so. Finally, for four consecutive years at issue she invested in her horse activity more than 100 percent of her non-horse related income, a situation never even approximated in any of the 150 cases. Under those unique circumstances, it is remarkable that anyone could find lack of profit motive and especially the propriety of the penalties. Therefore, this case presents a substantial and important question of federal law concerning IRC Section 183 when applied to horse activities, and poses even more important questions of federal law pertaining

to accuracy-related penalties hopelessly at odds with both the Tax Court and other Circuit Courts of Appeal.

5. No Prejudice. Petitioner knows of no reason that her requested extension would prevent the Respondent Commissioner of Internal Revenue from fulfilling his duties to collect appropriate revenues.

Petitioner is at risk of losing millions of dollars as a result of not only decisions in conflict with existing law, but by not having been afforded the due process to which she was entitled. Petitioner respectfully requests that this Court enter an Order extending the time to file a petition for writ of certiorari for 30 days, until December 1, 2018.

Dated: October 23, 2018

Respectfully Submitted,



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*Co-Counsel of Record for Petitioner
Cecilia M. Hylton*

CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.5, I, B. Paul Husband, a member of the Supreme Court Bar, hereby certify that one copy of the attached Application was served on October 23, 2018, via United States Postal Service on:

BRUCE R. ELLISEN
RANDOLPH L. HUTTER
Tax Division
Department of Justice
Post Office Box 502
Washington, DC 20044

*Counsel for Respondent
Commissioner of Internal Revenue*

A handwritten signature in blue ink that reads "B. Paul Husband". The signature is written in a cursive style with a horizontal line underneath the name.

B. Paul Husband

EXHIBIT A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1776

CECILIA M. HYLTON,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

No. 17-1777

CECILIA M. HYLTON,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Appeals from the United States Tax Court. (Tax Ct. Nos. 8887-13, 4955-14)

Submitted: March 29, 2018

Decided: May 7, 2018

Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard W. Craigo, LAW OFFICES OF RICHARD W. CRAIGO, Los Angeles, California; Glen E. Frost, FROST & ASSOCIATES, Annapolis, Maryland; B. Paul Husband, B. PAUL HUSBAND, PC, Burbank, California, for Appellant. David A. Hubbert, Acting Assistant Attorney General, Bruce R. Ellisen, Randolph L. Hutter, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Cecilia M. Hylton appeals the tax court's order sustaining the Commissioner's assessment of deficiencies and penalties, 26 U.S.C. § 6662(a) (2012), with respect to her federal income tax liability for the years 2004 through 2011. We have reviewed the record included on appeal, as well as the parties' briefs, and we find no reversible error. Accordingly, we affirm for the reasons stated by the tax court. *Hylton v. Comm'r*, Tax Ct. Nos. 8887-13, 4955-14 (U.S. Tax Ct., Sept. 11, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

EXHIBIT B

FILED: August 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1776 (L)
(008887-13)

CECILIA M. HYLTON

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

No. 17-1777
(4955-14)

CECILIA M. HYLTON

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent – Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Duncan, and Judge Agee.

For the Court

/s/ Patricia S. Connor, Clerk

EXHIBIT C

DECLARATION OF RICHARD W. CRAIGO

The undersigned hereby declares and states:

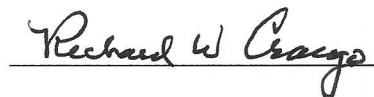
1. That I have from 1967 to date been a practicing attorney duly licensed by the state of California (and other jurisdictions, but not yet a member of the Supreme Court Bar).
2. That along with attorneys from two other offices, I am co-counsel to Cecilia M. Hylton (“Hylton”) in her appeal of the decisions of the United States Tax Court and the Fourth Circuit Court of Appeals opinions set forth being as Exhibit C to her Application for an Extension of Time to File a Writ of Certiorari with this Court.
3. That I alone was responsible for drafting, preparing, and filing such application. In that capacity, the following facts occurred:
 - (a) That I sought an outside attorney with knowledge of these procedural moves but was unable to speak with such an attorney at length until a telephone conversation of Saturday October 20, 2018. The first recommendation of such attorney was to apply for an extension, because the petition for a writ of certiorari would take more than a few days.
 - (b) That I did some preliminary work over that weekend planning to make a timely filing on Monday, October 22, 2018, after I had completed two appointments with different physicians, both that morning. At 9:00 a.m. on that date I underwent radiation therapy and thereafter went to my

second appointment with my ophthalmologist who recommended that my right eye be injected. That required a dilation of both eyes and a patch over one eye effectively ending my reading for the day; and I was extremely exhausted and slept most of the rest of the day. Although I worked on the document in the evening it was impossible to complete and file it until today.

- (c) That I would be pleased to supply the Court with statements from both physicians confirming these facts, and I sincerely hope this meets the criteria of “extraordinary circumstances,” especially since we do not believe that it will inconvenience the Respondent Commissioner of Internal Revenue.

I hereby declare under penalty of perjury that the foregoing is, to the best of my knowledge, true and correct.

Dated this 23rd day of October, 2018, at Los Angeles, California.

A handwritten signature in cursive script that reads "Richard W. Craigo". The signature is written in black ink and is positioned above a horizontal line.

Richard W. Craigo

EXHIBIT D

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**
1100 East Main Street, Suite 501, Richmond, Virginia 23219

March 29, 2018

RULE 34 NOTICE

No. 17-1776 (L), Cecilia Hylton v. Commissioner of IRS
008887-13

This appeal has been referred to a panel of three judges so that they may review the case before scheduling oral argument for possible disposition pursuant to Rule 34 of the Federal Rules of Appellate Procedure and Fourth Circuit Local Rule 34(a). If the panel to whom this appeal has been submitted unanimously agrees that oral argument is unnecessary, the panel will issue its decision without further notice to counsel that oral argument will not be scheduled. Alternatively, if the panel determines that oral argument is warranted, counsel will receive notice that the appeal has been placed on the court's oral argument calendar.

Sharon Roberson, Deputy Clerk