

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOV 26 1997

PATRICK FISHER
Clerk

KENNETH D. SHEPHERD,
MARTHA A. GREGORY,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 97-9011
(D.C. No. 20377-95)
(Commissioner of Internal Revenue)

ORDER AND JUDGMENT*

Before **BALDOCK, MCKAY** and **LUCERO**, Circuit Judges.

Upon careful consideration of the record, the briefs of the parties, the district court's order, and the applicable law, we **AFFIRM** for substantially the reasons stated in the opinion of the U.S. Tax Court.

*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge