

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

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No. 03-4041

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Van Roekel Farms, Inc.,	*	
	*	
Petitioner,	*	
	*	Appeal from the United States
v.	*	Tax Court.
	*	
Commissioner of Internal Revenue,	*	[UNPUBLISHED]
	*	
Respondent.	*	

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Submitted: June 17, 2004  
Filed: June 29, 2004

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Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

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PER CURIAM.

Van Roekel Farms, Inc. (Taxpayer) appeals the Tax Court's\* order on summary judgment upholding the Internal Revenue Service Commissioner's (Commissioner's) determinations of income tax deficiencies, see 26 U.S.C. § 404(k), and penalties, see 26 U.S.C. § 6662(a). We conclude no issue of material fact existed as to the Commissioner's determination of income tax deficiencies and resulting penalties because the parties stipulated that Taxpayer's employment stock option plan was disqualified under 26 U.S.C. § 401(a) for the tax years 1994-96, and the stipulation

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\*The Honorable James S. Halpern, United States Tax Court Judge.

was binding on Taxpayer. See Tax Ct. R. 91(e); Clendenen v. Comm’r, 345 F.3d 568, 569-70 (8th Cir. 2003). We also conclude the tax court properly denied all other claims or arguments because Taxpayer neither raised them in its petition nor moved to amend. See Tax Ct. R. 34(b)(4), Brumley v. Comm’r, 76 T.C.M. (CCH) 935, 937 (1998).

Accordingly, we affirm the judgment of the tax court. See 8th Cir. R. 47B.

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