



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL
CC:EBEO:2

NOV 05 1998

UILC: 7436.00-00

Number: **199919001**
Release Date: 5/14./1999

MEMORANDUM FOR DISTRICT COUNSEL

FROM: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EBEO

SUBJECT:

We are forwarding the attached Tax Court case legal file to you for assignment to an attorney in your office because the designated place for trial is Chicago, Illinois. The petition was served on the IRS Chief Counsel's office on

On the Service sent the taxpayer a "Notice of Determination Concerning Worker Classification Under Section 7436", advising the taxpayer that the Service had determined during the course of an employment tax audit that one or more individuals performing services for the taxpayer are to be legally classified as employees for purposes of the federal employment taxes under subtitle C of the Internal Revenue Code and that the taxpayer is not entitled to employment tax relief pursuant to section 530 of the Revenue Act of 1978 with respect to such individuals.

Taxpayer filed a petition for review of that determination with the Tax Court on The petition bears a postmark date of Because the postmark date is before the 91st day after the Notice of Determination was sent, the petition is considered timely filed. Treas. Reg. 302.7502-1(a). Accordingly, the Tax Court has jurisdiction over this case.

The jurisdiction of the Tax Court extends only to determining whether the workers at issue should be legally classified as employees, and whether the taxpayer is entitled to employment tax relief under section 530. I.R.C. section 7436(a). A proceeding under I.R.C. section 7436 is not a deficiency proceeding, and the Service is not authorized to send a notice of deficiency with respect to employment taxes. See I.R.C. section 6212(a).

In paragraphs and of the petition, taxpayer petitions for a redetermination of the amount of the disputed “deficiency” and additions to tax. The Tax Court does not have jurisdiction to determine the specific amounts of employment taxes owed or the applicability of additions to tax. Please file a motion to dismiss in part for lack of jurisdiction and a motion to strike the portion of the petition related to the amount of the tax.

Please refer to Rules 290 through 295 of the Tax Court’s Rules of Practice and Procedure for guidance in filing a responsive pleading. The taxpayer has elected that the proceedings be conducted under the Small Tax Court Procedures described in I.R.C. section 7436(c) and Tax Court Rule 295. The Tax Court has designated this an “S” case. Small tax cases under section 7436(c) are subject to rules similar to those set forth under section 7463.

Finally, because proceedings under section 7436 are so new, you should coordinate all documents (including the decision document, even if this case settles) filed with the Tax Court with the National Office (Employee Benefits and Exempt Organizations, Branch Two). For a sample motion to strike and to dismiss in part, please contact Lynne A. Camillo of this office at (202) 622-6040.

MARY OPPENHEIMER

By: _____
JERRY E. HOLMES
Chief, Branch 2, CC:EBEO:2

Attachments:
Legal file