



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

OFFICE OF
CHIEF COUNSEL

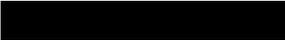
DEC 2, 1998

CC:EBEO:2

UILC: 7436.01-05

Number: **199918007**

Release Date: 5/7/1999



MEMORANDUM FOR

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

SUBJECT: Docket No.

LEGEND

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- City, State =
- Paragraph x =
- Paragraph y =

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 City, State. The petition was served on the IRS Chief Counsel's office on Date 1. We apologize for the delay in sending this to you; we have been working to understand the new Chief Counsel Advice redaction procedures.

On Date 2, 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 Date 3. The petition bears a postmeter date of Date 4. Because the postmeter date is before the 91st day after the Notice of Determination was sent, the petition is considered timely filed. Treas. Re. 302.7502-1(a). Accordingly, the Tax Court has jurisdiction over this case.

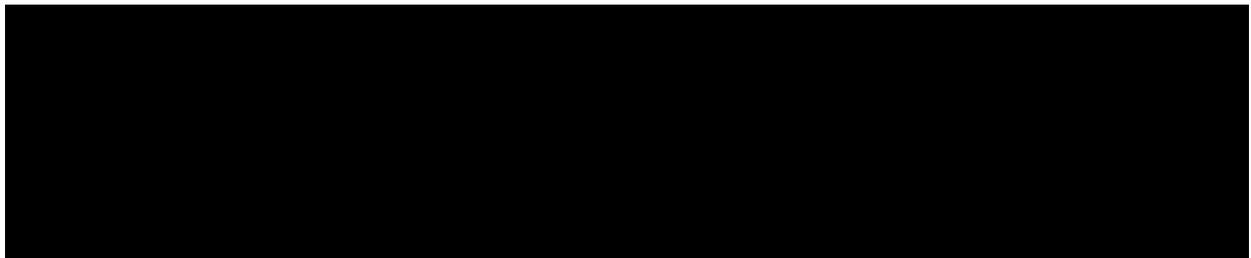
The jurisdiction of the Tax Court extends only to determining whether the workers at issue should be legally classified as employees, and whether the taxpayer is entitled to employment tax relief under section 530. I.R.C. section

In paragraph x and in paragraph y of the petition, taxpayer challenges the applicability of penalties. Since the Tax Court's jurisdiction is limited to reviewing the two determinations described above, the Tax Court lacks jurisdiction to determine whether any additions to tax or penalties are applicable. Accordingly, you should file a motion to strike and to dismiss in part for lack of jurisdiction that portion of the petition that addresses the penalties.

Please refer to Rules 290 through 295 of the Tax Court's Rules of Practice and Procedure for guidance in filing responsive pleadings.

Finally, because the Tax Court has yet to issue any reported decisions on proceedings under section 7436, 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 Division, Branch Two). The name of the branch two attorney assigned to the case appears in National Office Attorney field of Case Screen 2 of the TL-CATs computer system and she can be reached at 202-622-6040. When the case is assigned, your attorney may contact her to send you a sample motion and answer to assist you in litigating this case.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS





MARY OPPENHEIMER

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

Attachments:
Legal file