

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

DAVID FRANKLIN & RONDA CHING DAY, )  
 )  
 Petitioners, )  
 )  
 v. ) Docket No. 1770-12 L.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER**

This case is calendared for trial at the Honolulu, Hawaii trial session commencing June 10, 2013. On April 16, 2013, respondent filed a Motion To Show Cause Why Proposed Facts In Evidence Should Not Be Accepted As Established (Motion). The Court granted respondent’s Motion and, by Order to Show Cause dated April 18, 2013, ordered petitioners to show cause, on or before May 8, 2013, why the facts and evidence set forth in respondent’s proposed stipulation of facts (attached as Exhibit A to respondent’s motion) should not be accepted as established. See Rule 91(f)(1).<sup>1</sup> To date, petitioners have not filed a response. Consequently, the matters covered in respondent’s proposed stipulation of facts are subject to being deemed stipulated under Rule 91(f)(3), except as provided in Rule 91(f)(4). Under Rule 91(f)(4), the Court must determine “whether in the interests of justice a matter ought not be deemed stipulated.”

Pursuant to Rule 91(f)(4), the Court finds that in the interests of justice petitioners should not be deemed to have stipulated unqualifiedly to the Forms 4340, Certificates of Assessments and Payments; to the facts establishing whether respondent effected assessments of their income tax liabilities; or to the Case Activity Record Print purportedly maintained by respondent’s Appeals Office concerning the consideration of petitioners’ request for a hearing with respect to the collection action at issue in this case. Accordingly, the Order to Show Cause will be made absolute except with respect to the matters excepted below.

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<sup>1</sup>Rule references are to the Tax Court Rules of Practice and Procedure, available on the Tax Court Web site, [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

On the basis of the foregoing, it is

ORDERED that the Court's Order to Show Cause is hereby made absolute, and the facts and evidence set forth in the proposed stipulation of facts, attached as Exhibit A to respondent's Motion, are deemed established for purposes of this case with the following exceptions: the second sentence of paragraph 2; the third and fourth sentences of paragraph 3; paragraph 14; and Exhibits 1-J, 2-J, 3-J, 4-J, and 14-J.

**(Signed) Joseph H. Gale  
Judge**

Dated: Washington, D.C.  
May 23, 2013