

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

MN

JAMES CECIL & ANNE-MARIE SWANK,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 20448-12S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This case is presently calendared for trial at the Court’s New York, NY Small Tax Case trial session scheduled to commence on Monday, September 16, 2013.

On August 5, 2013, respondent filed both (1) a Motion To Continue and (2) a Motion To Remove Small Tax Case Designation. In each motion respondent represents that petitioners, who are self-represented, object to the granting of the motion.

In each of his motions, respondent states that “The legal issue in this case is whether petitioners are entitled to claim tax credits under I.R.C. § 901(a) for two specific taxes paid to the French government, the contribution sociale généralisée (“CSG” ) and the contribution pour le remboursement de la dette sociale (“CRDS”).” Respondent goes on to represent that such legal issue “is pending before the court in another case, Eshel v. Commissioner, docketed at number 8055-12 [and that] There are currently cross motions for summary judgment pending on this legal issue in docket number 8055-12.”

Respondent is indeed correct that cross-motions for summary judgment have been filed and are pending in Eschel v. Commissioner, dkt. No. 8055-12. Those motions (1) have been briefed by the lawyers for the parties in that case and (2) are under consideration by the Court. The issue in Eschel is whether the taxpayers,

who resided in France during the years there in issue, are entitled to claim tax credits under I.R.C. section 901(a) for the CSG and the CRDS.

It would appear that the issue whether the CSG and the CRDS are creditable taxes under I.R.C. section 901(a) is a legal issue of first impression. It is contrary to the Court's practice to decide legal issues of first impression in the context of small tax cases, which cases are non-appealable and non-precedential. See I.R.C. sec. 7463(b). This is particularly so when the same legal issue is pending in a regular case, which case is potentially appealable and precedential and where the issue therein has already been briefed by the lawyers for both the taxpayer and the Commissioner and is under consideration by the Court.

In view of the foregoing, and in recognition of the fact that the disposition of the issue in Eschel may provide a basis for decision of the instant case, the Court shall, notwithstanding petitioners' objection, grant respondent's Motion To Continue because trial this September would serve no purpose. However, the Court shall deny (but without prejudice to renew if circumstances in the future should so warrant) respondent's Motion To Remove Small Tax Case Designation because the legal issue in the instant case is already pending before the Court in a regular tax case.

Premises considered, it is hereby

ORDERED that respondent's Motion To Continue, filed August 5, 2013, is granted, and this case is stricken for trial from the Court's September 16, 2013, New York, NY Small Tax Case trial session and continued generally. It is further

ORDERED that respondent's Motion To Remove Small Tax Case Designation, also filed August 5, 2013, is denied without prejudice.

**(Signed) Robert N. Armen, Jr.  
Special Trial Judge**

Dated: Washington, D.C.  
August 7, 2013