UNITED STATES TAX COURT
WASHINGTON, DC 20217

BENYAMIN AVRAHAMI & ORNA AVRAHAMI, ET AL.,	)	**SD**
Petitioner(s),	)	
v.	)	Docket No. 17594-13, 18274-13.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER

These cases were tried at a special session of the Court starting in March 2015. The Court's issued its opinion, *Avrahami v. Commissioner*, 149 T.C. (Aug. 21, 2017), but on September 21, 2017 petitioners moved for reconsideration of a couple findings of fact.

We assume the parties' familiarity with the background of the cases.

Feedback's operation like an insurance company

The gist of petitioners' first argument is that Feedback must have operated like an insurance company because it reasonably relied upon its advisors to operate it. This is essentially an extension of the reasonable-reliance-on-professional-advisors defense from penalties under the Code to questions of whether an arrangement amounted to insurance as that term is commonly understood.

This is important because, as the Court explained in the opinion, "insurance" had been defined by caselaw rather than the Code or regulations. *Id.* at ___ (slip op. at 49, 53-57). Petitioners' first argument on this motion is that "Feedback hired several qualified professionals to ensure it operated within applicable regulatory

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requirements, issued policies with clear and consistent terms and charged reasonable premiums."

The question of whether an arrangement looks like insurance doesn't depend on whether those appearances flowed from professional advice but what actually happened. Here, some of the key facts were the extreme illiquidity of Feedback's investment portfolio -- so skewed toward flowing funds back to the Avrahamis that it had no other significant investments -- and the very telling pattern of receiving claims only after the IRS started an audit. Petitioners cite to no law that says there's a reasonable-reliance defense on the natural consequence of such activities -- namely, a more-likely-than-not finding that this was less insurance as that term is commonly understood and more a way of generating tax-deductible financing for the Avrahamis' other investments.

Characterization of policies

Petitioners' second argument is that "there should be no reasonable dispute [that] the policies at issue were claims made policies, not occurrence policies." Some were, but as we pointed out, at least one policy was so ill-drafted that it was *both* a claims-made *and* an occurrence policy. *Id.* at ___ (slip op. at 82). That was an illustration of a couple more general points -- sloppy drafting of policy language and actuarial calculations that did not reflect in all cases the actual policy language -- that then buttressed the finding of fact that Feedback was not operating like an insurance company.

The parties reasonably suggested resetting the clock for submitting a decision under Rule 155 until the Court decided this motion. It is therefore

ORDERED that petitioners' September 21, 2017 motion for reconsideration is denied. It is also

ORDERED that, on or before January 12, 2018, the parties submit the computations under Rule 155 or file a status report describing their progress.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
November 14, 2017