

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

GREGORY CHARLES KRUG,)
) CZ
Petitioner(s),)
)
v.) Docket No. 13502-17W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This case is before the Court to review respondent's final decision under section 7623(a) to reject petitioner's claim for an award under that section.¹ We review the decision under section 7623(b)(4). The essence of petitioner's claim is that a taxpayer has failed in its obligation to withhold employment taxes from workers. Respondent has moved for summary judgment in his favor. By orders dated February 8, 2018, and May 11, 2018, we ordered petitioner to respond to the motion. Petitioner has not responded. This case is calendared for trial at the trial session of the Court commencing at 10:00 A.M. on Monday, June 4, 2018, in Room 1167, Edward R. Roybal Center & Federal Building, 255 E. Temple St., Los Angeles, California, 90012. Because we have question with respect to respondent's grounds for the motion, we will set the motion for hearing at that trial session.

In support of the motion, respondent relies in part on Form 11369, Confidential Evaluation Report on Claim for Award, received by the Whistleblower Office from the IRS Tax Exempt and Government Entities Division (TEGE), recommending that petitioner's claim be denied, and setting forth reasons for the recommendation. In pertinent part, the Form 11369 states:

¹Unless otherwise indicated, all section references are to the Internal Code of 1986, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

SERVED May 29 2018

Social Security and Medicare wages are excluded from inmate services under the provision of Section 218(c)(6) of the Social Security Act. The Federal income tax withholding is dependent on the amount of wages paid which is less than the minimum wage. FIT on these wages would be dependent on other income (investment) earned by the inmates, and whether or not they file a joint return. Because of these unknown factors, this claim will be declined.

The Court has examined what we understand to be section 218 of the Social Security Act (42 U.S.C. sec. 418), and it is entitled Voluntary Agreements for Coverage of State and Local Employees. While 42 U.S.C. sec. 418(c)(6) does address services by inmates, we do not understand the relevance of the provision to petitioner's claim. We also do not understand the relevance of the statement concerning whether inmates owe FIT (we assume "Federal income tax"). Petitioner's claim is with respect to withholding for employment taxes. Since we assume that Whistleblower Office Tax Analyst Diane Davis relied on the Form 11369 in recommending to Whistleblower Office Director Lee Martin that he deny an award to petitioner, we require a better understanding of the reasons relied on by Mr. Martin to deny petitioner an award.

It is, therefore,

ORDERED that the motion is set for hearing at 10:00 A.M. on Monday, June 4, 2018, in Room 1167, Edward R. Roybal Center & Federal Building, 255 E. Temple St., Los Angeles, California 90012.

This Order constitutes official notice of its contents to the parties.

(Signed) James S. Halpern
Judge

Dated: Washington, D.C.
May 29, 2018