

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CAPITOL BC RESTAURANTS, LLC,)	
BANYAN EQUITY INVESTORS, INC.,)	
BANYAN EQUITY INVESTORS II, INC.,)	
BANYAN MEZZANINE FUND, LP,)	
BANYAN MEZZANINE FUND II, LP, ET AL,)	
)	
Petitioners,)	
)	
v.)	Docket No. 9281-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case was scheduled for trial at the Court’s session in Boston beginning October 15, 2018. However, on July 23, 2018, respondent filed a motion for entry of decision (Doc. 21), which states that “Respondent and petitioners, partners other than the tax matters partner, have entered into a settlement agreement, the terms of which are reflected in the decision document lodged concurrently herewith.” To the motion is attached a certificate of service, alleging service on “petitioners and the following partners, including the Tax Matters Partner”, with a list of 18 names and addresses following. One of the names on the certificate of service is “Greg Morris / Tax Matters Partner” (who the petition alleges is TMP for 2014) and another is “Richard Pawlowski” (who the petition alleges is TMP for 2013). According to its normal routine, the Court served on the parties a reminder of the October 15 trial date, but the copies served on Mr. Morris and Mr. Pawlowski were return by the U.S. Postal Service as “unable to forward”. Generally speaking, it is the duty of the TMP to apprise partners of events affecting their interests. The return of our mail to the TMPs suggests that the TMPs may similarly have not received the motion for entry of decision and may not be functioning in their capacity as TMPs. See, e.g., Rule 248(b)(3), Tax Court Rules of Practice and

Procedure. To assure that notice of the motion for entry of decision has been properly given to all those who are entitled to notice, it is

ORDERED that this case is stricken from the Court's October 15, 2018, Boston trial session and that jurisdiction is retained by the undersigned. It is further

ORDERED that, no later than October 26, 2018, respondent shall file a status report in which he shall state whether the motion for entry of decision was served on all partners entitled to notice. See I.R.C. sec. 6226(c), (d). If it was not, then respondent's status report shall make a recommendation as to further proceedings.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
October 5, 2018