

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

KWABENA OWUSU BANAHENE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 6086-18 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

On August 21, 2018, respondent filed a Motion For Summary Judgment pursuant to Rule 121.<sup>1</sup> Thereafter, on November 27, 2018, petitioner filed a Response, objecting to the granting of respondent’s motion. Most recently, on November 30, 2018, respondent filed a First Supplement to his motion.

The Court may grant summary judgment only if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Among other matters, questions are raised as to whether the settlement officer properly verified compliance with applicable law and administrative procedure, including (1) whether Letter 1125 and the examination reports (Forms 5816) proposing return preparer penalties for 2013, 2014 and 2015 were sent to petitioner before assessment of such penalties; (2) whether petitioner received sufficient time to request further administrative consideration before assessment of such penalties; and (3) whether respondent validly assessed against petitioner return preparer penalties for the years in issue. Secs. 6330(c)(1), 6694(b); sec. 1.6694-4(a)(1) and (2), Income Tax Regs.; see Hoyle v. Commissioner, 131 T.C. 197 (2008).

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<sup>1</sup> All Rule references are to the Tax Court Rules of Practice and Procedure. And, unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended.

The Court recognizes that respondent contends, inter alia, that the provisions of section 1.6694-4(a)(1) and (2), Income Tax Regs., are directory rather than mandatory, a contention that appears to present a legal issue of first impression. However, the Court questions whether it would be judicious to address such issue at the present time given that it would be moot (and any opinion addressing it would arguably be dicta) if respondent did, in fact, comply with the provisions of the aforesaid regulation. As previously indicated, whether respondent did, in fact, comply with such provisions presents a disputed issue of material fact.

Further, the Court recognizes that respondent seeks, in the alternative, partial summary judgment on a number of non-dispositive matters. However, the Court again questions whether it would be judicious to address those matters at the present time because of the paramount nature of the fundamental issue, i.e., the validity of the underlying assessments.

In sum, the Court draws, as it must, all factual inferences against respondent as the moving party and concludes that he has not established (1) that there is no genuine dispute as to any material fact and (2) that a decision may be entered in his favor as a matter of law. Under these circumstances summary judgment is not appropriate. See Rule 121(b). Accordingly, the Court will deny respondent's motion, as supplemented.

Premises considered, it is

ORDERED that respondent's Motion For Summary Judgment, filed August 21, 2018, and supplemented November 30, 2018, is denied.

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

Dated: Washington, D.C.  
December 10, 2018