

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

TODD ROSS & MILLIE VILAPLANA, )  
 )  
 Petitioners, )  
 )  
 v. ) Docket No. 19705-18S.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER**

This case is calendared for trial at the San Diego, California, Trial Session of the Court commencing December 16, 2019. On September 24, 2019, petitioners filed a Motion for Continuance (motion). Petitioners' case involves advance payments of the premium assistance credit (PTC) received by them in 2016. The PTC was enacted under The Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010).

In their motion petitioners referenced a decision by the United States District Court for the Northern District of Texas, currently on appeal to the Court of Appeals for the Fifth Circuit, and asserted that the court had held, "[t]he entire ACA \* \* \* to be unconstitutional, including \* \* \* [advance payments of the PTC]". See Texas v. United States, 340 F. Supp. 3d 579 (N.D. Tex. 2018), appeal filed (5th Cir. Jan. 3, 2019). Petitioners appear to assert that the appellate court may agree that the ACA is unconstitutional and therefore the tax treatment of the PTC cannot be determined until the appeal has been heard.

On October 3, 2019, respondent filed a written Notice of Objection to Motion for Continuance of Trial Generally. Respondent states that 16 days after the United States District Court issued its decision, it ordered the decision stayed during the pendency of the appeal to the Court of Appeals for the Fifth Circuit, Texas v. United States, 352 F. Supp. 3d 665 (N.D. Tex. 2018), and, therefore, the decision is not binding on anyone. Further, respondent states that the United States District Court only considered whether amendments to the ACA that reduced the shared responsibility payment under Internal Revenue Code section 5000A(c) to

zero dollars effective for months beginning after December 31, 2018, Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. No. 115-79, sec. 11081(a) and (b), 131 Stat. at 2092, made the ACA unconstitutional. Respondent contends that the analysis of the decision would not affect the PTC for years before 2019.

The Court agrees with respondent and does not agree with petitioners. The appeal of the United States District Court's stayed decision does not prevent the Court from proceeding with petitioners' case insofar as the advance payments of the PTC in issue are for 2016, a period prior to the effective date of the amendments to the ACA. Upon due consideration, it is

ORDERED that petitioners' motion for continuance is denied.

**(Signed) Diana L. Leyden**  
**Special Trial Judge**

Dated: Washington, D.C.  
October 9, 2019