

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

LAWRENCE W. DOYLE &)	
JOHN F. MOYNIHAN,)	
)	
Petitioners,)	CT
)	
v.)	Docket No. 4865-19W.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This is a “whistleblower” case brought pursuant to section 7623(b). Respondent has filed a motion (Doc. 15) for summary judgment; the motion has been fully briefed by the parties; but the Court is not yet ready to issue an opinion. In the meantime there are two additional filings made by petitioners that we address in this order.

Motion to strike

Petitioners filed a motion (Doc. 44) to strike the declaration of Debra McCullum, an employee of the IRS’s Whistleblower’s Office (“WBO”). The declaration certifies the contents of what purports to be the WBO’s administrative record for petitioners’ claim. Petitioners’ motion asserts various omissions from that record and for that reason asks that the declaration be stricken. The motion also asks for the same relief that petitioners requested in their opposition to respondent’s motion for summary judgment.

Petitioner’s motion is actually in the nature of a sur-reply to respondent’s reply (Doc. 27) in support of his motion for summary judgment. We will consider petitioners’ filing in that context but will deny it as a motion to strike. If petitioners are correct about omissions from the certified administrative record, the

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proper remedy is not the striking of the certification or the record; rather, the remedy would presumably be the supplementation of that record with the missing information. A ruling on that issue is not yet timely.

Motion to schedule a pretrial conference

“Petitioners’ Request for Pretrial Conference” (Doc. 53) raises two “issues we would like to discuss in a phone conference”: (1) “supplementing our pleadings as we continue to develop more relevant information that is impactful on our pleadings” and (2) the fact that “information ... contained in our case encompasses the current Global Pandemic”.

We ordinarily welcome proposals of a pretrial conference between the Court and parties (which we often conduct by telephone), and we often initiate such calls sua sponte. At the current moment in this case, however, we do not believe that a conference call would be useful. Both subjects that petitioners propose to bring up involve information outside the scope of the pleadings in this case and, more important, outside the WBO’s determination that we review in this case. Petitioners have already argued, in connection with respondent’s pending motion, that the administrative record as constructed by respondent is deficient. If we determine that this is correct, then we will in due course address appropriate procedures. Petitioners may wish to bring up these matters in that context.

It is therefore

ORDERED that petitioners’ motion to strike (Doc. 44) is denied; and their request for a pretrial conference (Doc. 53) is denied without prejudice.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
June 16, 2020