

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CF HEADQUARTERS CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 22321-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On August 26, 2020, petitioner filed a document designated electronically as petitioner’s Notice of Supplemental Authority, attaching thereto a copy of the opinion of the U.S. Court of Appeals for the Third Circuit in Commissioner v. BrokerTec Holdings, Inc., 967 F.3d 317 (3d Cir. 2020), rev’g T.C. Memo. 2019-32. Petitioner’s Notice of Supplemental Authority sets forth in detail (including citations to the record) petitioner’s position regarding the effect that the foregoing decision of the Court of Appeals should have on the resolution of the issues in this case.¹

On September 10, 2020, respondent filed a Motion to Strike, requesting therein that the Court strike, as prejudicial, certain portions of petitioner’s Notice of Supplemental Authority that “raise legal arguments and direct the Court to

¹Petitioner’s Notice of Supplemental Authority was preceded by two relevant filings by respondent. First, on May 29, 2019, respondent filed a Notice of Supplemental Authority, attaching thereto (as Exhibit A) a copy of a letter to the Court dated April 17, 2019, from petitioner’s counsel, wherein he alleged similarities between the facts in BrokerTec Holdings, Inc. v. Commissioner, T.C. Memo. 2019-32, and the facts in this case, and argued that, due to these alleged factual similarities, “the reasoning and holding in *BrokerTec* should clearly control the outcome of the I.R.C. § 118(a) issue” in this case. Respondent’s Notice of Supplemental Authority argued, in detailed rebuttal, that “the Court in Brokertec made errors of law and erred in applying the law to the facts” and, moreover, that the two cases are distinguishable on the facts.

(continued...)

findings of fact and trial testimony that petitioner posits supports its legal argument.” Respondent further argues that he “on the other hand has not been afforded the opportunity to rebut petitioner’s argument.” Respondent advises that petitioner opposes the granting of the Motion to Strike, and further that, should the Court deny it, he “intends to file a Motion For Leave to respond to Petitioner’s Notice.”

We agree with respondent that petitioner’s Notice of Supplemental Authority is substantively a supplemental brief to which respondent should be afforded an opportunity to respond. Rather than strike the offending portions of the document,² we will recharacterize it as petitioner’s Supplemental Brief and direct respondent to file a response within 30 days.

The foregoing considered, it is

ORDERED that the Clerk of the Court shall recharacterize petitioner’s Notice of Supplemental Authority, filed August 26, 2020, as petitioner’s Supplemental Brief. It is further

ORDERED that respondent shall, on or before October 16, 2020, file a response to petitioner’s Supplemental Brief, addressing the arguments therein and setting forth in detail his position regarding the effect, if any, that the decision of the U.S. Court of Appeals for the Third Circuit in Commissioner v. BrokerTec

¹(...continued)

Second, on August 18, 2020, respondent filed a Notice of Relevant Judicial Decisions, attaching thereto a copy of the opinion of the Court of Appeals in Commissioner v. BrokerTec Holdings, Inc., 967 F.3d 317 (3d Cir. 2020), rev’g T.C. Memo. 2019-32. Although respondent’s second filing advises of the rendering of the Court of Appeals’ decision, it does not set forth in detail his position regarding the effect, if any, that decision should have on the resolution of the issues in this case.

²As noted supra p. 1 n.1, each of the parties were previously afforded an opportunity to address the Court’s decision in BrokerTec Holdings, Inc. v. Commissioner, T.C. Memo. 2019-32, and we therefore believe it is appropriate to afford each a similar opportunity to address the Court of Appeals’ reversal of that decision.

Holdings, Inc., 967 F.3d 317 (3d Cir. 2020), should have on the resolution of the issues in this case. It is further

ORDERED that respondent's Motion to Strike, filed September 10, 2020, is hereby denied.

(Signed) Joseph H. Gale
Judge

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