

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

STANLEY BATTAT & ZMIRA BATTAT,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 17784-12.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

On February 2, 2017, the Court issued an opinion in this case, 148 T.C. No. 2, in which we denied petitioners' Motion for Recusal of Judge. On February 10, 2017, petitioners filed a Motion for Certification of an Interlocutory Order To Permit Immediate Appeal. We will deny petitioners' motion for reasons stated next.

This Court may certify an interlocutory order for an immediate appeal if we conclude that (1) a controlling question of law is involved, (2) substantial grounds for a difference of opinion are present, and (3) an immediate appeal may materially advance the ultimate termination of the litigation. Sec. 7482(a)(2)(A); Gen. Signal Corp. v. Commissioner, 104 T.C. 248, 251 (1995), affd. on other grounds 142 F.3d 546 (2d Cir.1998); Kovens v. Commissioner, 91 T.C. 74, 77 (1988), affd. without published opinion 933 F.2d 1021 (11th Cir. 1991); New York Giants v. Commissioner, T.C. Memo. 2003-28.

The controlling question of law here is whether Presidential removal authority under section 7443(f) is unconstitutional, and whether Tax Court Judges subject to that removal authority should not decide cases so long as that removal authority exists. Petitioners assert that a conflict exists on this point between the February 2, 2017, opinion in this case and the opinion of the Court of Appeals for the D.C. Circuit in Kuretski v. Commissioner, 755 F.3d 929 (D.C. Cir. 2014). We disagree.

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In our opinion in this case, we held that Presidential authority to remove Tax Court Judges for cause does not violate separation of powers principles because, while Tax Court Judges exercise a portion of the judicial power of the United States, Freytag v. Commissioner, 501 U.S. 868, 890-891 (1991), its Judges exercise no portion of the judicial power reserved to Article III judges; thus, Presidential removal authority cannot interfere with the Article III judicial power. Battat v. Commissioner, 148 T.C. \_\_, \_\_ (slip op. at 38) (Feb. 2, 2017). We concluded that, “[w]hatever the merits of providing for Presidential authority to remove Tax Court Judges, that authority presents no concerns of constitutional magnitude.” Battat v. Commissioner, 148 T.C. at \_\_ (slip op. at 44).

The Court of Appeals in Kuretski applied a different analysis, but it rejected, as did this Court, the contention that Presidential removal authority is unconstitutional. Petitioners cite, and we are aware, of no legal authority supporting petitioners’ contention regarding the controlling issue of law in this case. Thus, we conclude that the second requirement of section 7482(a)(2), the presence of “substantial grounds for a difference of opinion”, is not met.

In consideration of the foregoing, it is

ORDERED that petitioners’ Motion for Certification of an Interlocutory Order To Permit Immediate Appeal, filed February 10, 2017, is denied.

**(Signed) John O. Colvin  
Judge**

Dated: Washington, D.C.  
March 14, 2017