

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

JOHANNES LAMPRECHT &)	
LINDA LAMPRECHT,)	
)	
Petitioners,)	
)	
v.)	Docket No. 14410-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Now pending before the Court in this case are: (1) petitioners’ motion for partial summary judgment (Doc. 41), (2) petitioners’ motion to compel responses to interrogatories (Doc. 43), (3) petitioners’ motion to compel production of documents (Doc. 44), and (4) petitioners’ motion for a continuance (Doc. 60). On September 25, 2017, the Court held a telephone conference with counsel for both parties and discussed the motions. In addition to stating orally the orders given below, the Court did not order but suggested to petitioners’ counsel that, no later than October 31, 2017, he should identify to respondent the documents that he has provided to respondent as to which petitioners do not stipulate authenticity and identify the persons for whom respondent previously requested identification in its motion to compel that the Court denied as premature in its order of April 25, 2016. It is

ORDERED that petitioners’ motion for summary judgment, addressing section 6751(b), is denied. We denied their equivalent motion by our order of December 20, 2016, in which we “conclude[d] that I.R.C. sec. 6751(b) does not preclude respondent from raising the fraud issue. See Graev v. Commissioner, 147 T.C. ___ (Nov. 30, 2016).” Petitioners’ new motion points out that about three months later, “[o]n March 17, 2017, the United States Court of Appeals for the Second Circuit [issued its decision] in Chai v. Commissioner, 851 F.3d 190, 216

(2d Cir 2017), ... h[olding] that the opinion of the majority in Graev was incorrect and substantially adopt[ing] the opinion of the dissent in Graev.” However, this current case is evidently not appealable to the Second Circuit and would be bound by the opinion of the Tax Court in Graev. See Golsen v. Commissioner of Internal Revenue, 54 T.C. 742 (1970), aff’d, 445 F.2d 985 (10th Cir. 1971). It is further

ORDERED that petitioners’ motion to compel production of documents is denied, except that it is granted to the following extent: In response to Request No. 1, respondent shall, no later than October 13, 2017, provide to petitioners all of the following documents not previously provided (and shall affirm in writing that it has done so): (1) UBS documents not included among the Bates-stamped UBS documents that petitioners have provided to respondent; (2) IRS transcripts or other documents showing petitioners’ non-filing of returns or other documents; (3) documents (including notes of IRS personnel), other than written communications to the IRS from petitioner’s counsel, that reflect or embody statements of petitioners’ counsel on which respondent will or may rely. The Court would expect to preclude respondent from relying at trial upon any responsive document not produced by October 13, 2017. It is further

ORDERED that petitioners’ motion to compel responses to interrogatories is denied, except that it is granted, and respondent is required to supplement his interrogatory responses by no later than October 13, 2017, to the following extent: In response to Interrogatory No. 3, respondent shall identify each person (including each institutional person) who provided documents to the IRS and the documents so provided. In response to Interrogatory Nos. 6-11, respondent shall make a single supplemental response identifying all of petitioners’ bankers, petitioners’ foreign financial advisors, petitioners’ accounting professionals, petitioners’ professionals, and respondent’s agents, known to respondent, whom respondent may call as witnesses on the subject of fraud. If such persons may be called as witnesses but respondent does not yet know their identities, then respondent shall so state. The Court would expect to preclude respondent from calling at trial any witnesses whose identities were known to respondent as of October 13, 2017, but were not disclosed by that date. In response to Interrogatory Nos. 14-15, respondent shall identify the amounts (by schedule and line number) of the tax benefits that respondent believes petitioners received on their 2006 and 2007 returns (whether through statement or omission). It is further

ORDERED that petitioners' motion for a continuance is granted, to the extent that this case is stricken from the calendar of the Court's upcoming session in Washington, D.C., commencing October 16, 2017, but that the undersigned judge retains jurisdiction over this case.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
September 26, 2017