

Employment

JR Holmes

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ORIGINAL

UNITED STATES TAX COURT

MESCALERO APACHE TRIBE, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 28120-14  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent. )

DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED AND DECIDED: That Baca, Teralyn; Blake, Caroline; Chino, Elisha; Cochise, Anna; Cochise, Frances; Coho, Kenethia; Comanche, Ashley; Cooper, Sevina; Damon, Eloise; Damon, Eugene; Duffy, Tanya; Escalanti, Ilene; Evans, Eugene; Fernando, Kyrstin; Gaines, Trudy; Garcia, Ernestine; Hanks, Carol; Lapaz, Calvin; Little, Lydia; Magoosh, Howard; Maria, Damon; Martinez, Lorilee; Montoya, Concepcion; Murphy, Wendolyn; Ortega, Bonna; Palmer, Katurah; Pena, Juan Jr; Rice, Marsha; Rocha, Linda; Rocha, Tonya; Rodriguez, Cris; Rodriguez, Ted; Sainz, Gilbert; Shendo-Herrera, Garrick; Shendo-Herrera, Lynea; Smith, Megan; Solomon, Harriett; Toclanny, Harrison; Treas, Columbine; Valdez, Tarena; and Vazquez, Carlos, are classified as employees of petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the periods ending March 31, 2009, through and including December 31, 2009;

That with respect to Baca, Teralyn; Blake, Caroline; Chino, Elisha; Cochise, Anna; Cochise, Frances; Coho, Kenethia; Comanche, Ashley; Cooper, Sevina; Damon, Eloise; Damon, Eugene; Duffy, Tanya; Escalanti, Ilene; Evans, Eugene; Fernando, Kyrstin; Gaines, Trudy; Garcia, Ernestine; Hanks, Carol; Lapaz, Calvin; Little, Lydia; Magoosh, Howard; Maria, Damon; Martinez, Lorilee; Montoya, Concepcion; Murphy, Wendolyn; Ortega, Bonna; Palmer, Katurah; Pena, Juan Jr; Rice, Marsha; Rocha, Linda; Rocha, Tonya; Rodriguez, Cris; Rodriguez, Ted; Sainz, Gilbert; Shendo-Herrera, Garrick; Shendo-Herrera, Lynea; Smith, Megan; Solomon, Harriett; Toclanny, Harrison; Treas, Columbine; Valdez, Tarena; and Vazquez, Carlos the petitioner is not entitled to treatment under section 530 of the Revenue Act of 1978, as

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amended, for the periods ending March 31, 2009, through and including December 31, 2009;

That Aragon, Justina; Baca, Leoma; Baca, Wynette; Bautista, Hector; Blake, Sherman; Chee, Merlene; Chimal, Marlinda; Cochise, Inez; Comanche, Arden Sr; Comanche, Rex Jr; Coonie, Rebecca; Enjady, Pascal; Fulsom, Minerva; Geronimo, Houston; Gonzales, Omar; Johnson, Sammy; Kazhe, Virginia; Kinzhuma, Darwin; Kinzhuma, Prestina; Lathan, Patricia; Lester, Joel; Martinez, Manuela; Martinez, Yvette; Melendrez, Natalia; Mednez, Carmen; Mendez, Robert; Morgan, Linda; Morin, Sonya; Peso, Sonny; Platero, Vernetta; Rice, Melvin; Rice, Nadena; Ruiz, Raymond Sr; Scott, Renalda; Shanta, Loretta; Shendo, Lorena; Torres, Elizabeth; Valdez, James; and Yazza, Zelda are not classified as employees of the petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the taxable periods ending March 31, 2009, through and including December 31, 2009;

That since Aragon, Justina; Baca, Leoma; Baca, Wynette; Bautista, Hector; Blake, Sherman; Chee, Merlene; Chimal, Marlinda; Cochise, Inez; Comanche, Arden Sr; Comanche, Rex Jr; Coonie, Rebecca; Enjady, Pascal; Fulsom, Minerva; Geronimo, Houston; Gonzales, Omar; Johnson, Sammy; Kazhe, Virginia; Kinzhuma, Darwin; Kinzhuma, Prestina; Lathan, Patricia; Lester, Joel; Martinez, Manuela; Martinez, Yvette; Melendrez, Natalia; Mednez, Carmen; Mendez, Robert; Morgan, Linda; Morin, Sonya; Peso, Sonny; Platero, Vernetta; Rice, Melvin; Rice, Nadena; Ruiz, Raymond Sr; Scott, Renalda; Shanta, Loretta; Shendo, Lorena; Torres, Elizabeth; Valdez, James; and Yazza, Zelda are not classified as employees, the Court does not have to resolve the issue whether petitioner is entitled to treatment under section 530 of the Revenue Act of 1978 with respect to such workers for the taxable periods ending March 31, 2009, through and including December 31, 2009;

That Bigmouth, Erica; Chavez, David; Dallas, Triana; Dennis, Jeremy; Dolan, Janel; Escalanti, Ilene; Fernando, Kyrstin; Gallerito, Adrian; Hernandez, Mathew; Herrera, Selena; Kanseah, Melanie; Lester, Toaiva; Magoosh, Howard; Martinez, Laura; Mody, Angel; Morgan, Lisa; Morgan, Loretta; Morgan, Monica; Peralta, Esperanza; Ramey, William; Rice, Nadena; Robinson, Emily; Rocha, Rachel; Rocha, Tonya; Saenz, Sarah; Sager, Lisa; Sainz, Gilbert; Scott, Walter; Second, Leland; Shanta, Chrislynn; Shanta, Ina; Shendo, Estelle; Starr, Lisa; Tenorio, Rachel; Toclanny,

Harrison; Tortalita, Kimberly; Tso-Blake, Janelle; Tsosie, Patricia; and Valdez, Caroline are classified as employees of petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the periods ending March 31, 2010, through and including December 31, 2010;

That with respect to Bigmouth, Erica; Chavez, David; Dallas, Trina; Dennis, Jeremy; Dolan, Janel; Escalanti, Ilene; Fernando, Kyrstin; Gallerito, Adrian; Hernandez, Mathew; Herrera, Selena; Kanseah, Melanie; Lester, Toaiva; Magoosh, Howard; Martinez, Laura; Mody, Angel; Morgan, Lisa; Morgan, Loretta; Morgan, Monica; Peralta, Esperanza; Ramey, William; Rice, Nadena; Robinson, Emily; Rocha, Rachel; Rocha, Tonya; Saenz, Sarah; Sager, Lisa; Sainz, Gilbert; Scott, Walter; Second, Leland; Shanta, Chrislynn; Shanta, Ina; Shendo, Estelle; Starr, Lisa; Tenorio, Rachel; Toclanny, Harrison; Tortalita, Kimberly; Tso-Blake, Janelle; Tsosie, Patricia; and Valdez, Caroline the petitioner is not entitled to treatment under section 530 of the Revenue Act of 1978, as amended, for the periods ending March 31, 2010, through and including December 31, 2010;

That Apachito, Collette; Baca, Leoma; Blake, Sherman; Brusuelas, Paul; Byers, Jennifer; Chee, Merlene; Cochise, Frances; Comanche, Arden Sr; Damon, Eloise; Davis, Clyde III; Davis, Deirdre; Evans, Shane; Fernando, Dorene; Hare, Mark; Johnson, Sammy; Kanseah, Lynette; Latham, Danette; Lavender, Denyse; Lester, Ermina; Magoosh, Lyle; Mendez, Margaret; Mendez, Pamela; Montoya, Concepcion; Morin, Courtney; Morris, Rodriguez; Niko, Filiga; Perez, Mariah; Rocha, Desirae; Spitty, Kathleen; Toadlena, Cheryl; Torres, Elizabeth; Valdez, James; Venego, Julianna; Vigil, Sheyenne; and Yazza, Zelda are not classified as employees of the petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the taxable periods ending March 31, 2010, through and including December 31, 2010;

That since Apachito, Collette; Baca, Leoma; Blake, Sherman; Brusuelas, Paul; Byers, Jennifer; Chee, Merlene; Cochise, Frances; Comanche, Arden Sr; Damon, Eloise; Davis, Clyde III; Davis, Deirdre; Evans, Shane; Fernando, Dorene; Hare, Mark; Johnson, Sammy; Kanseah, Lynette; Latham, Danette; Lavender, Denyse; Lester, Ermina; Magoosh, Lyle; Mendez, Margaret; Mendez, Pamela; Montoya, Concepcion; Morin, Courtney; Morris, Rodriguez;

Niko, Filiga; Perez, Mariah; Rocha, Desirae; Spitty, Kathleen; Toadlena, Cheryl; Torres, Elizabeth; Valdez, James; Venego, Julianna; Vigil, Sheyenne; and Yazza, Zelda are not classified as employees, the Court does not have to resolve the issue whether petitioner is entitled to treatment under section 530 of the Revenue Act of 1978 with respect to such workers for the taxable periods ending March 31, 2010, through and including December 31, 2010;

That Bigmouth, Christopher; Blake, Sherman; Botella, Deana; Buurma, Dakota; Byers, Jennifer; Carrillo, Michelle; Center, Jessica; Chico, Todd; Chino, Ezra; Cochise, Frances; Cochise, Wacey; Curliss, Janice; Davis, Deirdre; Gallerito, Adrian; Garcia, Nolan; Hernandez, Mathew; Hosetosavit, Marcia; Hunter, Jodi; Kaydahzinne, Velda; Kayitah, Feather; Keene, Ida; Magoosh, Lyle; Monongye, Jadanna; Morgan, Loretta; Morgan, Marilyn; Morgan, Paula; Munoz, Kimberly; Notsinneh, Kristy; Peso, Flint; Provencio, Margaret; Ramey, William; Randall, Murray; Rex, Comanche Jr; Rocha, Heather; Saenz, Sarah; Scott, Ivana; Scott, Rossilyn; Shanta, Chrislynn; Shanta, Loretta; Shanta, Shantal; Shendo, Pansy; Shendo-Sanchez, Margaret; Tahnito, Wynona; Tissnolthtos, Calsey; Valdez, Darrell Jr; Valdez, Craig; Valdez, Lawrence; Vazquez, Carlos; Yawakia, Henrietta; and Yuzos, Darin are classified as employees of petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the periods ending March 31, 2011, through and including December 31, 2011;

That with respect to Bigmouth, Christopher; Blake, Sherman; Botella, Deana; Buurma, Dakota; Byers, Jennifer; Carrillo, Michelle; Center, Jessica; Chico, Todd; Chino, Ezra; Cochise, Frances; Cochise, Wacey; Curliss, Janice; Davis, Deirdre; Gallerito, Adrian; Garcia, Nolan; Hernandez, Mathew; Hosetosavit, Marcia; Hunter, Jodi; Kaydahzinne, Velda; Kayitah, Feather; Keene, Ida; Magoosh, Lyle; Monongye, Jadanna; Morgan, Loretta; Morgan, Marilyn; Morgan, Paula; Munoz, Kimberly; Notsinneh, Kristy; Peso, Flint; Provencio, Margaret; Ramey, William; Randall, Murray; Rex, Comanche Jr; Rocha, Heather; Saenz, Sarah; Scott, Ivana; Scott, Rossilyn; Shanta, Chrislynn; Shanta, Loretta; Shanta, Shantal; Shendo, Pansy; Shendo-Sanchez, Margaret; Tahnito, Wynona; Tissnolthtos, Calsey; Valdez, Darrell Jr; Valdez, Craig; Valdez, Lawrence; Vazquez, Carlos; Yawakia, Henrietta; and Yuzos, Darin the petitioner is not entitled to treatment under section 530 of the Revenue Act of 1978, as

amended, for the periods ending March 31, 2011, through and including December 31, 2011;

That Apachito, Collette; Baca, Leoma; Balatche, Deandra; Balderrama, Whitney; Bell, Darwin; Brusuelas, Glenda; Byers, Christina; Comanche, Arden Sr; Comanche, Ashley; Fernando, Kyrstin; Gaines, Trudy; Gehrke, Sandra; Hare, Mark; Johnson, Sammy; Kanseah, Anna; Kanseah, Lynette; Kaydahzinne, Collier; Kaydahzanne, Kurt; La Paz, Raymond; Lavender, Denyse; Lester, Corvin; Lester, Joel; Lester, Joylene; Mangas, Kiana; Melendrez, Florence; Mendez, Charles; Mendez, Margaret; Mendez, Norma; Morgan, Bertha; Morin, Courtney; Padilla, Aspen; Peralta, Esperanza; Pino, Bennie; Rice, Robert; Saenz, Millette; Spitty, Kathleen; Spottedbird, Hazel; Sunrise, Beth; Toclanny, Harrison; and Via, Bernalyn are not classified as employees of the petitioner for purposes of federal employment taxes under Subtitle C of the Internal Revenue Code with respect to the taxable periods ending March 31, 2011, through and including December 31, 2011;

That since Apachito, Collette; Baca, Leoma; Balatche, Deandra; Balderrama, Whitney; Bell, Darwin; Brusuelas, Glenda; Byers, Christina; Comanche, Arden Sr; Comanche, Ashley; Fernando, Kyrstin; Gaines, Trudy; Gehrke, Sandra; Hare, Mark; Johnson, Sammy; Kanseah, Anna; Kanseah, Lynette; Kaydahzinne, Collier; Kaydahzanne, Kurt; La Paz, Raymond; Lavender, Denyse; Lester, Corvin; Lester, Joel; Lester, Joylene; Mangas, Kiana; Melendrez, Florence; Mendez, Charles; Mendez, Margaret; Mendez, Norma; Morgan, Bertha; Morin, Courtney; Padilla, Aspen; Peralta, Esperanza; Pino, Bennie; Rice, Robert; Saenz, Millette; Spitty, Kathleen; Spottedbird, Hazel; Sunrise, Beth; Toclanny, Harrison; and Via, Bernalyn are not classified as employees, the Court does not have to resolve the issue whether petitioner is entitled to treatment under section 530 of the Revenue Act of 1978 with respect to such workers for the taxable periods ending March 31, 2011, through and including December 31, 2011;

That under the above determination there are no penalties or additions to tax due or owing from petitioner;

That the proper amount of employment tax under the above determination due and owing from petitioner is as shown below:

Type of Tax	Mar. 31, 2009	June 30, 2009	Sept. 30, 2009	Dec. 31, 2009
FICA	\$2,118.56	\$2,118.56	\$2,118.56	\$2,118.56
ITW	\$ 346.17	\$ 346.17	\$ 346.17	\$ 346.17

Type of Tax	Mar. 31, 2010	June 30, 2010	Sept. 30, 2010	Dec. 31, 2010
FICA	\$2,468.00	\$2,468.00	\$2,468.00	\$2,468.00
ITW	\$ 403.27	\$ 403.27	\$ 403.27	\$ 403.27

Type of Tax	Mar. 31, 2011	June 30, 2011	Sept. 30, 2011	Dec. 31, 2011
FICA	\$3,723.44	\$3,723.44	\$3,723.44	\$3,723.44
ITW	\$ 636.12	\$ 636.12	\$ 636.12	\$ 636.12

(Signed) Mark V. Holmes  
Judge

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Entered:

\* \* \* \* \*

It is further stipulated that the Court may enter the foregoing decision in this case.

It is hereby stipulated that the term "federal employment taxes" refers to income tax withholding (ITW) under I.R.C. § 3402(a), the tax imposed by the Federal Insurance Contributions Act (FICA) under I.R.C. §§ 3101, 3102(a), and 3111, and the tax imposed by the Federal Unemployment Tax Act (FUTA) under I.R.C. § 3301(a).

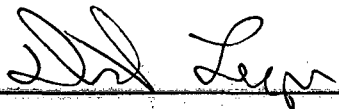
It is further stipulated that the federal employment tax liabilities due from petitioner were calculated using the rates under I.R.C. § 3509(a).

It is further stipulated that interest will accrue and be assessed as provided by law on the tax liabilities due from petitioner.

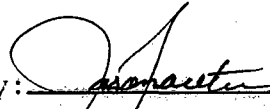
It is further stipulated that petitioner is not entitled to attorney's fees under I.R.C. § 7430.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioner waives the restrictions contained in I.R.C. § 7436(d) (referring to § 6213(a)) prohibiting assessment and collection of the tax (plus statutory interest) until the decision of the Tax Court becomes final.

Drita Tonuzi  
Deputy Chief Counsel  
(Operations)  
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Date: 12-17-17

Date: 12/19/2017