



Received
09/07/23 06:09 pm

Filed
09/07/23

LakePoint Land II, LLC, LakePoint Land Group,
LLC, Tax Matters Partner,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed
Docket No. 13925-17
Document No. 170

Motion for Continuance

SERVED 09/07/23

UNITED STATES TAX COURT

LAKEPOINT LAND II, LLC,)	
LAKEPOINT LAND GROUP, LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 13925-17
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	Filed Electronically
)	
Respondent.)	Honorable Christian N. Weiler

JOINT MOTION FOR CONTINUANCE OF TRIAL

THE PARTIES MOVE, pursuant to the provisions of Tax Court Rule 133, that the Court remove this case from the special trial session scheduled to commence in Atlanta, Georgia, on October 2, 2023, and retain jurisdiction of this case. The parties have reached a basis of settlement on all of the issues in the case.

The parties also request that the Court order the following:

- (1) All deadlines currently pending under any orders of this Court be vacated; and
- (2) The parties be required to file a Stipulation of Settled Issues, or similar settlement document, within 30 days of the granting of the instant Motion.

IN SUPPORT THEREOF, the parties respectfully state:

1. This case is calendared for a special trial session of the Court, beginning on October 2, 2023, in Atlanta, Georgia before the Honorable Christian N. Weiler.

Procedural Background

2. On August 11, 2022, respondent filed a Motion for Partial Summary Judgment on the issue of whether respondent complied with the written supervisory approval requirement of section¹ 6751(b)(1). See Motion for Partial Summary Judgment, Doc.² 43. In support of the motion, respondent attached a declaration by the immediate supervisor of the revenue agent who initially determined the penalties and a Penalty Consideration Lead Sheet dated “July 16, 2016” (“penalty lead sheet”). See id., Declaration at ¶ 3.

3. On March 24, 2023, the Court granted respondent’s Motion for Partial Summary Judgment, as supplemented. See Order, Doc. 95. The Court found that

¹ Unless otherwise indicated, all “section” references are to the Internal Revenue Code (“Code”) and “Rule” references are to the Tax Court Rules of Practice and Procedure in effect at all relevant times.

² “Doc.” references are to the documents compiled in the docket index for this case at Docket No. 13925-17.

the penalty lead sheet dated “July 16, 2016” complied with the requirements of section 6751(b)(1). Id. at pp. 4-5.

4. In their Motions for Reconsideration, both parties asked the Court to reconsider the above order. See petitioner’s Motion for Reconsideration of Order, Doc. 102, and Memorandum in Support of Motion for Reconsideration of Order, Doc. 103, respondent’s Motion for Reconsideration of Order, Doc. 106. The parties agree that the penalty lead sheet was not signed on July 16, 2016. Respondent incorrectly alleged and argued in his Motion for Partial Summary Judgment that there was no material fact in dispute that the immediate supervisor signed the penalty lead sheet on July 16, 2016.

5. On August 29, 2023, the Court issued T.C. Memo. 2023-111. In this Memorandum Opinion, the Court ruled on the parties’ Motions for Reconsideration and petitioner’s Motion to Impose Sanctions (Doc. 104, and Memorandum in Support of Motion to Impose Sanctions, Doc. 105, and together the “Sanctions Motion”). See Memorandum Opinion, Doc. 168. Regarding the Motions for Reconsideration, the Court granted petitioner’s motion and vacated the March 24, 2023, order. Id. at pp. 9-10. Regarding the Sanctions Motion, the Court granted petitioner’s motion in part and determined that respondent is liable for fees

and expenses incurred by petitioner, with the amount to be determined at a later date. Id. at pp. 13-14.

7. Respondent emphasizes the following: The Internal Revenue Service (“IRS”) is committed to fairness, candor, and transparency in its interactions with taxpayers and the courts. Holding itself to the highest standards of integrity is critical to maintaining confidence in the agency’s work and enabling it to carry out its mission on the taxpayers’ behalf. Consistent with those goals, and in light of all the circumstances here, the IRS does not intend to continue pursuing penalties in this case. It has also undertaken an ongoing review of syndicated conservation easement cases to ensure that the evidentiary record about supervisory approval is properly presented and that the agency pursues or continues to pursue penalties only where appropriate.

Current Status of the Case

8. On August 31 and September 1, 2023, the parties held conference calls during which the parties engaged in meaningful settlement discussions. The parties have reached a basis for settlement of all issues before the Court.

9. The parties respectfully request that this Court cancel the scheduled special trial session, continue the trial of this case, and vacate all pending deadlines.

10. The parties agree to file a Stipulation of Settled Issues within 30 days of this Motion being granted.

11. The parties also request that the Court retain jurisdiction so that the settlement can be more seamlessly effectuated.

12. This Motion is not being made for the purposes of delay, but in order to preserve the Court's and parties' resources.

WHEREFORE, the parties respectfully request that this motion be granted and that the Court order the following:

- (1) Cancel the special trial session scheduled to commence on October 2, 2023, in Atlanta, Georgia and continue the trial of this case;
- (2) Vacate all deadlines currently pending under any orders of this Court;
- (3) The parties file a Stipulation of Settled Issues, or similar settlement document, within 30 days of the granting of the instant Motion; and
- (4) That this Court retain jurisdiction of this case.

Respectfully submitted,



ARMANDO GOMEZ
Skadden, Arps, Slate, Meagher &
Flom LLP
Counsel for Petitioner
Tax Court Bar No. GA0514
1440 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 371-7868
E-mail: armando.gomez@skadden.com



ROLAND BARRAL
Skadden, Arps, Slate, Meagher &
Flom LLP
Counsel for Petitioner
Tax Court Bar No. BR0140
One Manhattan West
New York, NY 10001
Telephone: (212) 735-3708
E-mail: roland.barral@skadden.com

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

By: **Vivian
Bodey** Digitally signed by
Vivian Bodey
Date: 2023.09.07
17:05:32 -05'00'

VIVIAN BODEY
Special Trial Attorney
(Strategic Litigation)
Tax Court Bar No. BV0086
4050 Alpha Road, 14th Floor
MS 2000 NDAL
Dallas, TX 75244
Telephone: (469) 801-1006
E-mail: vivian.bodey@
irscounsel.treas.gov

Elizabeth P. Flores Digitally signed by Elizabeth P.
Flores
Date: 2023.09.07 18:03:38 -04'00'

ELIZABETH P. FLORES
Senior Level Counsel
(Strategic Litigation)
Tax Court Bar No. FE0226
33 Maiden Lane, 12th floor
New York, New York 10038
Telephone: (646) 259-8004
E-mail: Elizabeth.P.Flores@
irscounsel.treas.gov



MICHAEL TODD WELTY
Todd Welty, P.C.
Counsel for Petitioner
Tax Court Bar No. WM0494
4279 Roswell Road NE
Suite 208, #352
Atlanta, GA 30342
Telephone: (214) 289-9693
Email: todd@toddweltpc.com

Date: 9/7/2023

Date: September 7, 2023