

No. 19-929

In the
Supreme Court of the United States

LOUIS S. SHUMAN; SANDRA SHUMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR REHEARING

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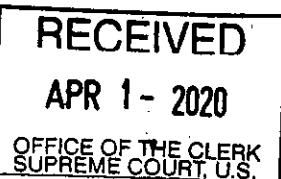


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RULE

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PETITION FOR REHEARING

Pursuant to Rule 44, Petitioner hereby respectfully petitions the U.S. Supreme Court for rehearing of this case on the grounds that the Court's denial of their Petition for Writ of Certiorari should be reversed because: (1) of substantial grounds not previously presented, and (2) on the grounds that intervening circumstances, of a substantial or controlling nature, have effected, and impacted, this case.

1. Well Settled Rules Governing Summary Judgment, On the Admissible Evidence in this Case, Show Petitioner's Entitlement to Prevail in this Case, Thereby Warranting the Granting of their Petition.

It is settled law that the IRS's Notice of Deficiency is presumed correct, and the taxpayer must present sufficient admissible evidence to rebut this presumption. Wickwire v. Reinecke, 275 U.S. 101 (1927).

It is also settled law that when the taxpayer submits sufficient admissible evidence to rebut the IRS presumption, the burden of proof shifts to the IRS to support its position for rejecting the refund claims, with admissible evidence, and not mere conclusory, unsubstantiated statements. Gatlin v. Commissioner, 754 F.2d 921 (11th Cir. 1985); Trescott v. Commissioner, TC Memo 2012-321(TC-2012); Helvering v. Taylor, 293 U.S. 507 (1935).

The record in this case clearly shows Petitioner met their burden of submitting substantial admissible evidence in support of their refund claim. Once

Petitioner met its burden, as was done in this case, the burden of proof passed to the IRS to support its position. Helvering, *supra*.

The record in this clearly shows that IRS presented no admissible evidence whatsoever in opposition to Petitioner's claims regarding stock option basis calculations. On this basis, IRS objections, unsupported by any evidence to the contrary, was legally insufficient to deny Petitioner's refund claims based on calculation of stock option basis.

Given the complete absence of any evidence presented by IRS, in opposition to Petitioner's refund claims, based on stock option basis calculations, under settled principles of FRCP 56 rules governing summary judgment motions, Petitioner would have been entitled to a judgment in its favor as a matter of law. FRCP 56; Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986).

FRCP 56 makes it very clear that when there is no genuine issue as to any material fact, summary judgment is mandated. Anderson, *supra*. It is settled law that there is no genuine issue of material fact, when the motion for summary judgment shows that the opposing party has failed to present evidence to support their case; and, to support their case, the opposing party is not permitted to rely on mere allegations, but must submit specific facts showing evidence to support their position. Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

In this case, the record is void of any specific facts, or evidence, presented by IRS, in opposition to

Petitioner's refund claims based on stock option basis calculations.

In addition, the facts and law submitted by Petitioner to support their claim of timeliness of their refund claim regarding stock option basis, on statute of limitations grounds, were also, in no way on the record, rebutted by IRS. Anderson v. Liberty Lobby Inc., supra; Matsushita Electric Industries, supra.

For the foregoing reasons, it is respectfully submitted that the Court should grant Petitioner's Petition in this case.

2. Impact of COVID-19

The Court's denial of this Petition required that Petitioner expeditiously proceed to comply with the adverse decision by finding the means to satisfy the upcoming IRS demands for payment.

Petitioner, as a dentist, is immediately affected by the Presidential decree that the entire country is in a state of emergency, as is everyone else. Dental offices are extremely risky given the nature of the work, which requires close proximity to the mouth, nose and face of patients. As a result, as advised by the American Dental Association, and other governmental bodies concerned with human health, dental offices are shutting down for regular business, except for emergencies. This has had a direct and immediate impact on Petitioner's business, affecting cash flow, overhead, and the ability to meet the oncoming IRS demands for payment.

Petitioner, having had cancer surgery in 2019, and also being diabetic, is among the group of persons most dangerously affected by COVID-19.

The Court can take judicial notice of the limited relief IRS has publicized, regarding extension of tax deadlines, and limited suspension of interest charges. This may not be enough at a time when overhead continues, but cash flow drops, and even stops.

The Dental industry can not work from home, and must see patients, face to face, to perform its regular business. It is respectfully requested that any decision on this motion, under these extraordinary and emergency circumstances, be delayed, during the period of this national emergency, but, at the least for the next 120 days, while this emergency situation unfolds, and there is more certainty as to when business can resume without direct and immediate danger to human health.

CONCLUSION

Based on the foregoing, it is respectfully requested that this motion for rehearing be granted; and that there be a stay of these proceedings as above requested.

Respectfully submitted,

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March 27, 2020

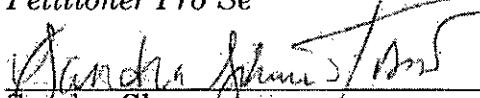
CERTIFICATION OF PETITIONER PRO SE

I hereby certify that this Petition For Rehearing is presented in good faith and not for delay.


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