

OCT 15 2019

OFFICE OF THE CLERK

No. _____

**In the
Supreme Court of the United States**

Brian E. Harriss,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

On Application for Extension of Time to File Petition for A Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**To the Honorable Elena Kagan, Associate Justice of the Supreme
Court of the United States and as Circuit Justice for the United States
Court of Appeals for the Ninth Circuit:**

Petitioner respectfully requests that the time for filing a petition for a writ of certiorari in this matter be extended for 60 days, or until January 14, 2020. The Judgment for review was entered on August 17, 2019 by a panel of the Court of Appeals for the Ninth Circuit. A copy of that Judgment is attached as Appendix A. Therefore, without an extension, Petitioner's Petition for a Writ of Certiorari would be due on November 15, 2019. This application is presented at least ten days before

that date. Under 28 U.S.C. §1254(1), this Court has jurisdiction over the judgment of the Court of Appeals.

BACKGROUND

Petitioner petitioned the U.S. Tax Court for a redetermination of notices of deficiency for tax years 2010 and 2011, which cases were consolidated. After submitting the case as fully stipulated, the Tax Court pushed the parties into an unnecessary trial at which it allowed the Commissioner to qualify or materially change his stipulations of fact. In this and in other ways, the trial was farcical. The Tax Court eventually ruled against Petitioner. Petitioner appealed to the Ninth Circuit Court of Appeals. The decision of the tax Court did not include any judgment concerning the 2010 tax year, and Petitioner argued that, therefore, the issue of the 2010 notice of deficiency was not before the Court of Appeals. The Tax Court found many facts that had not been stipulated and that had no evidentiary support. Even worse, the Tax Court erroneously characterized many of the facts found as stipulated, when actually they never had been. In its ruling affirming this decision, the Court of Appeals relied on these groundless facts and characterizations, essentially finding that everything Petitioner received was taxable. In so doing, the Court of Appeals either ruled that all earnings of every description are federally taxable as "compensation for services" as a matter of law, or, alternatively, that none of the definitions of Congress pertaining to what may be reported on information returns as wages or other income are relevant (and the reliance on them is frivolous). Under this ruling, and those like it, either (1) the law

imposes an unapportioned, direct tax on the undistinguished revenue of the people (and thus is unconstitutional), or (2) the tax, as written, is Constitutional, but the way the IRS *administers* that law is repugnant both to that Constitution and to this Court's ruling in *Brushaber v. Union Pacific R. Co.*, 240 US 1, 36 S. Ct. 236, 60 L. Ed. 493, which held that "taxation on income [is] in its nature an excise entitled to be enforced as such *unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent...*" (emphasis added).

The judgment of the Court of Appeals calls into question more than just the fairness of the court to one litigant. This case illustrates that the time has come, and the "duty" has arisen, to reexamine either the law itself or the reality of its administration—either to "disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it," or to reverse the ruling of the Ninth Circuit as having misapplied the law to the facts of this case.

Petitioner therefore wishes to seek a writ of *certiorari* on this issue of universal importance to all American taxpayers.

REASONS FOR GRANTING AN EXTENSION OF TIME

Petitioner proceeded in the case below *pro se*, but hopes to obtain the assistance of counsel for this appeal, and has not yet found the help that he needs.

Further, on the due date of the petition for certiorari, Petitioner's simultaneous brief is due to be filed in another consolidated case, Tax Court Docket

Nos. 23017-17 and 5690-18. Petitioner is also proceeding *pro se* in that case.

Petitioner is married and the father of two preschool children. He works more than 50 hours per week and has a 2.5 hour round-trip commute each day. His ability to be present as a husband and father has been severely compromised by his concentration on his tax cases, which he diligently prosecutes, but he is finding himself to be stretched and stressed to the point of compromising his most important relationships.

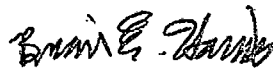
Petitioner recently discovered a fact that calls into question the subject matter jurisdiction of the Tax Court from the initiation of the case below, but needs to obtain supporting evidence to be sure. He is submitting a request under the Freedom of Information Act (FOIA) to the Department of the Treasury to discover whether the person who made the deficiency determinations, and who signed and mailed the notices of deficiency, had the authority to do so under the law. If, as he suspects, the person(s) issuing these notices had no authorization to do so, he needs time to file a motion with the Tax Court to vacate the decision for lack of subject matter jurisdiction. Petitioner feels that this avenue is preferable to, and more expedient than, petitioning this Court for a writ of *certiorari*. The IRS Office of Disclosure routinely takes six weeks or longer to respond to such requests.

Without the requested extension, petitioner fears that he will not be able to find counsel, or to complete the Petition *pro se* in the time required. Particularly in light of the probable lack of jurisdiction of the trial court, Petitioner does not believe that an extension will prejudice the Commissioner.

Under Rule 13.5 of the Rules of the United States Supreme Court, for good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days.

WHEREFORE, petitioner prays that this Court will find good cause to grant him an extension of no more than 60 days, or to January 14, 2020, to file his Petition for a Writ of *Certiorari* in this case.

Dated October 15, 2019.



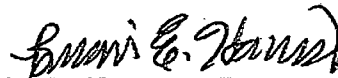
Brian E. Harriss
Petitioner
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CERTIFICATE OF SERVICE

I certify that I served the above PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT by depositing it with the United States Postal Service with first-class postage prepaid to the Commissioner's counsel of record as follows:

Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001

Dated: October 15, 2019.



Brian E. Harriss