

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

TOT PROPERTY HOLDINGS, LLC,
TOT LAND MANAGER, LLC, TAX MATTERS PARTNER
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**APPLICATION TO THE HON. CLARENCE THOMAS,
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Rule 13(5) of the Rules of this Court, petitioners respectfully request an extension of time of 59 days, to and including March 18, 2022, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the current deadline for filing the petition for certiorari is January 18, 2022.¹

In support of this request, petitioner states as follows:

1. The U.S. Court of Appeals for the Eleventh Circuit rendered its decision on June 23, 2021, App. 1a–40a, and denied a timely petition for rehearing on October 20, 2021, App. 42a–43a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

¹ Pursuant to Rule 29.6, Petitioners TOT Property Holdings, LLC and TOT Land Managers, LLC, its tax matters partner, are limited liability companies. PES Fund VI, LLC, also a limited liability company, is a 98.99% owner of TOT Property Holdings, LLC. No publicly-traded company or corporation owns 10% or more of Petitioners' stock.

2. The result of the Eleventh Circuit decision is the full disallowance for federal income tax purposes of petitioners' deductions claimed for a charitable donation of certain land interests and the imposition of substantial tax penalties determined by the Internal Revenue Service (IRS).

3. The mandate issued in this case on October 28, 2021, after the denial of rehearing on October 20, 2021.

4. On December 29, 2021, the U.S. Court of Appeals for the Eleventh Circuit issued its decision in a separate matter—*Hewitt v. Commissioner*, No. 20-13700, reversing and remanding a decision of the U.S. Tax Court. The decision by the Eleventh Circuit in *Hewitt* holds that the same Treasury Regulation used to disallow petitioners' charitable deductions in this case is an invalid regulation under the procedural requirements of the Administrative Procedure Act (APA), *see* 5 U.S.C. § 706. The Eleventh Circuit's decision has broad ramifications for numerous taxpayers and the IRS that extend well beyond the express tax matters at issue in *Hewitt* and the instant case.

5. As the Eleventh Circuit acknowledged in its decision in *Hewitt*, the Court of Appeals did not have the opportunity to address this issue in the instant case involving petitioners. If the Eleventh Circuit had addressed such issue, it follows from its decision in *Hewitt* that petitioners should have been afforded their requested relief on appeal and that reversal of the Tax Court's decision is required.

6. Additional time is required to fully evaluate the holding and impact of the Eleventh Circuit's very recent decision in *Hewitt* on the instant case.

7. Moreover, undersigned counsel only recently became involved in the case, was not involved in the trial or appellate proceedings, and requires additional time to familiarize himself with the issues in this case and with the *Hewitt* decision.

For the foregoing reasons, petitioners request that an extension of time to and including March 18, 2022, be granted within which petitioners may file a petition for a writ of certiorari.

Respectfully submitted,



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January 7, 2022

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