

IN THE SUPREME COURT OF THE UNITED STATES

JOE ALFRED IZEN, JR.	§	
	§	
Petitioner,	§	
	§	
VS.	§	NO. _____
	§	
COMMISSIONER OF INTERNAL	§	(COURT OF APPEALS CASE
REVENUE	§	NO. 21-60679)
	§	
Respondent.	§	

**PETITIONER, JOE ALFRED IZEN, JR.'S, UNOPPOSED APPLICATION TO
EXTEND TIME WITHIN WHICH TO FILE PETITION FOR WRIT OF
CERTIORARI PURSUANT TO SUPREME COURT RULE 13(5)**

TO THE HONORABLE ASSOCIATE JUSTICE SAMUEL A. ALITO, JR., OF SAID COURT:

COMES NOW, the Petitioner, Joe Alfred Izen, Jr., and files this his Unopposed Application to Extend Time Within Which to File Petition for Writ of Certiorari Pursuant to Supreme Court Rule 13(5) and, in support of said motion, would show the Court the following:

JURISDICTION

I.

The final subject decision subject to review by this Court through Petition for Writ of Certiorari was issued by the United States Court of Appeals for the Fifth Circuit on September 30, 2022. This Court has jurisdiction over final appeals from United States Courts of Appeal, by way of Writ of Certiorari, pursuant to Title 28 U.S.C. 1254. The Judgment of the United States Court of Appeals for the Fifth Circuit which is being appealed was entered by the Court of Appeals on September 30, 2022.

The Petition for Writ of Certiorari is currently due to be

filed with this Court on or before December 29, 2022, the date ninety days after the United States Court of Appeals for the Fifth Circuit entered its Judgment on September 30, 2022.

COPY OF OPINION: A true and correct copy of the Opinion of the United States Court of Appeals for the Fifth Circuit which is being appealed is attached hereto, marked Exhibit A, and is incorporated by reference. A true and correct copy of the order denying Petitioner's Motion for Rehearing is attached hereto, marked Exhibit B, and is incorporated by reference.

**SPECIFIC REASONS FOR JUSTIFICATION OF GRANT OF EXTENSION OF TIME:
ISSUES AND GROUNDS FOR GRANTING WRIT OF CERTIORARI:**

This Court long ago in Mobile Co. v. State of Tennessee, 153 U.S. 486, 490, 14 S.Ct. 968, 38 L.Ed. 793 (1894) held that the Federal Rules for construction of tax statutes require a rejection of a strict reading of such statutes urged by the Commissioner of Internal Revenue where application of such construction leads to absurd results. See Mobile Co. v. State of Tennessee at P. 490:

And the court is of opinion, and doth accordingly so adjudge and decree, that said eight per cent clause is arbitrary, insensate, and absurd, and is void and unenforceable, and furnishes no obstacle whatever to the taxation of said properties.

More recently this Court applied the rule of statutory construction requiring avoidance of absurd results in strictly applying tax statutes in Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575, 102 S.Ct. 3245, 3252, 73 L.Ed.2d 973.

In its memorandum opinion affirming the United States Tax Court's denial of Petitioner Izen's charitable deduction for the

gift of his interest in a Hawker jet to the 1940 Air Terminal Museum, currently on display at Hobby Airport as museum piece open to the public gave a strict reading to I.R.C. Sections 170(f)(11) and (12).

The Fifth Circuit's strict application of the wording of these two tax statutes led to, in this case, absurd results prohibited by this Court's precedent. Of all of the documentation required to substantiate his charitable deduction, Petitioner Izen's proof of substantiation lacked only a receipt of written memorandum from the 1940 Air Terminal Museum which contained Petitioner Izen's social security number. A contemporaneous receipt which lacked only Petitioner Izen's social security number, written acknowledgement of the charitable gift of the Hawker jet from the 1940 Air Terminal Museum, a contemporaneous appraisal of the value of the aircraft interest donated, and all other forms and disclosures supporting the charitable deduction were submitted by Petitioner Izen.

Further, the record below before the Tax Court and the Court of Appeals clearly established that the intent of Congress' statutory requirements for written substantiation provided to the Commissioner before a charitable deduction was claimed by A taxpayer for the gift of an aircraft with the value in excess of \$5,000.00 was fully satisfied.

Petitioner Izen who was seriously ill at the end of tax year 2010 **did not claim the charitable deduction for the gift of the jet aircraft** on his original personal income tax return (1040) for the applicable tax year 2010 when the gift was made. Peti-

tioner Izen did not claim a charitable deduction for the gift until he had been audited by the Internal Revenue Service for the tax year 2010, had timely filed a Tax Court Petition appealing the I.R.S.'s determinations of his income, deductions, and income tax liability, and amended his Tax Court Petition, with the permission of the U.S. Tax Court, to add for the first time his claim to the charitable deduction.

Petitioner Izen also filed an amended income tax return (1040) claiming the deduction which became the first income tax return mentioned in the wording of the I.R.C. statutes governing charitable gifts which triggered the duty to provide substantiation to the IRS previously obtained and compiled by the taxpayer.

The result reached by the Fifth Circuit in the Memorandum Opinion attached which ignores the above facts and record admitted by the Commissioner and disallows a charitable deduction otherwise valid simply because the Museum's attorney forgets to insert the donor's social security number in a contemporaneous receipt or other written acknowledgement is an absurd result which violates rather than reaches and satisfies the result intended by Congress that the IRS be provided sufficient information of donors making large charitable gifts at the very time since deductions are claimed so that the Commissioner will have a chance to audit such donor taxpayers if he chooses to do so.

This case also presents a serious question concerning the Tax Court's jurisdiction to consider the validity of deductions which have not been previously claimed by a taxpayer in audits or other proceedings before the IRS, but are raised for the first

time in the Tax Court by amendment granted by the Tax Court under the Tax Court Rules of Practice and Procedure.

A plethora of Tax Court cases hold that "new matters" including the validity of deductions not previously claimed before the IRS in audits or appeals may be raised by the taxpayer in his original or amended petitions and determined by the Tax Court in order to reach a taxpayer's correct income tax liability. A corollary question which will be raised by Petitioner's Petition for Certiorari will be whether the Tax Court is precluded from sustaining otherwise valid deductions which have been substantiated by a taxpayer simply because a statute requires substantiation be provided to the Commissioner supporting such deductions on an income tax return filed prior to or during the Tax Court proceeding in which the claim to the deductions is decided.

A final question raised is whether, as the Fifth Circuit held, the Tax Court, a Court of Appeals, or this Court, is precluded from examining all of a taxpayer's proof of substantiation and reading such documents together in order to provide information missing from a particular document such as the contemporaneous receipt described by the Tax Court and Fifth Circuit. If the documents when read together provide all information required by Congress, can a strict reading of a statute be imposed which ignores the total disclosure of all of the proof of substantiation offered by a taxpayer which is in the record?

OTHER GROUNDS SUPPORTING FINDING FOR GOOD CAUSE:

1. Illness of Petitioner: Petitioner Izen is currently over the age of 70. He has continued his solo practice with

difficulty after acquiring a COVID 19 infection in March, 2020 and suffering several variant reinfections. Petitioner Izen's eyesight no longer permits him to read the decisions of this Court or other authorities -- they have to be read to him. Preparing legal documents within the normal time periods and deadlines provided by this Court's rules or the rules of other Courts has become more and more challenging.

2. In addition to pandemic symptoms still suffered by Petitioner, Petitioner has the following legal work or responsibilities which present conflicting demands on his time and effort expended in his solo practice:

2.1. On December 8, 2022 Petitioner is required to prepare for and attend a deposition in the case styled Lance v. Wharton, No. 2022-2070-5 pending before the 414th Judicial District Court of McLennan County, Texas.

2.2. On December 12, 2022 Petitioner is required to attend a hearing on Intervenor's Motion to Dismiss filed in the Donalson v. Thiel, Et Al, case pending before the County Civil Court at Law No. 3 of Harris County, Texas.

2.3. On December 14, 2022 Petitioner is required to attend a final trial/hearing in the case styled Burk v. Burk, No. 2020-08-316, pending before the County Court at Law of Rusk County, Texas.

2.4. Additionally on December 14, 2022 Petitioner is required to prepare and file Appellant's Opening Brief in the case styled Ruthven v. Wike, pending before the Court of Appeals for the First Supreme Judicial District of Texas at Houston,

Texas.

2.5. December 15, 2022 is Petitioner's deadline for filing a Motion for Rehearing in the case styled Swanson, Et Al, v. California Franchise Tax Board, Et Al, Appeal No. D079315 pending before the California Court of Appeals, Fourth Division.

2.6. On December 19, 2022 Petitioner is scheduled for a jury trial in the case styled Shannon Curtis, Et Al, v. Westbury Square Townhomes, No. 2015-47231-A, pending before the 164th Judicial District Court of Harris County, Texas which is estimated to be a two week trial.

2.7. On December 21, 2022 Petitioner is required to prepare and file Appellant's Opening Brief in the case styled Acord, Et Al v. Korman, pending before the Court of Appeals for the Ninth Supreme Judicial District of Texas at Beaumont, Texas.

2.8. On January 6, 2023 Petitioner is required prepare for and attend a mediation in the case styled Ortiz v. Glen Meadows, No. 1181744, pending before the County Civil Court at Law No. 3 of Harris County, Texas.

2.9. On January 9, 2023 Petitioner is required to prepare and file a Petition for Review to the California Supreme Court in the Swanson, Et Al v. California Franchise Tax Board, Et Al, case above described.

2.10. On January 11, 2023 Petitioner is required to attend a status conference in the cases styled State of Texas v. Robert High, Nos. 80346CR and 80347CR pending before the County Court of Navarro County, Texas.

2.11. On January 23, 2023 Petitioner is scheduled for two

jury trials in the cases styled Ortiz v. Glen Meadows, Et Al No. 1181744, pending before the County Civil Court No. 3 of Harris County, Texas and Rodriguez v. Branham, Et Al, No. 1183571, pending before County Civil Court at Law No. 1 of Harris County, Texas.

RELIEF REQUESTED:

Based on all of the arguments and facts set out above, Petitioner Izen requests that this Court enter an order granting petitioner an enlargement of time within which petitioner may file his Petition for Writ of Certiorari in this case to and until February 27, 2023. Petitioner requests an enlargement of time of sixty days within which to complete and file his Petition for Writ of Certiorari.

This enlargement of time is sought, not for the purposes of delay only, but so that justice may be done.

Good cause exists under Rule 13(5) for the grant of an extension of time within which to file Petitioner's Writ of Certiorari.

WHEREFORE, ABOVE PREMISES CONSIDERED, Petitioner requests that this Honorable Court entertain this motion and, after due consideration of same, that this Court enter its Order: (1) granting Petitioner an enlargement of time of sixty days to and until February 27, 2023 within which to file his Petition for Writ of Certiorari; and (2) granting Petitioner such other and further relief, both in law and in equity, to which he may show himself to be justly entitled.

Respectfully submitted,

/s/ Joe Alfred Izen, Jr.

Joe Alfred Izen, Jr.
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CERTIFICATE OF COMPLIANCE

This motion was created using a Wordstar 6 DOS word processing program and contains 2,149 words in the entire document.

/s/ Joe Alfred Izen, Jr.

Joe Alfred Izen, Jr.

CERTIFICATE OF CONFERENCE

A copy of this Motion was emailed to Ms. Bethany Hauser who has stated that she DOES NOT OPPOSE this motion.

/s/ jurisdiction

Joe Alfred Izen, Jr.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent to Ms. Bethany Hauser, Attorney, U.S. Department of Justice, Tax Division, Appellate Section, P.O. Box 502, Washington, D.C. 20044 by ECF electronic transmission on this the 8th day of December, 2022.

/s/Joe Alfred Izen, Jr.

Joe Alfred Izen, Jr.

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VERIFICATION

STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared Joe Alfred Izen, Jr., known to me to be the attorney for Petitioner, who after being by me duly sworn, on his oath, did depose and testify that he had read the foregoing document, that all of the facts contained therein are true and correct and within his own personal knowledge.

Joe Alfred Izen, Jr.

Joe Alfred Izen, Jr.

SUBSCRIBED AND SWORN TO on this the 8th day of December, 2022, to certify which witness my hand and seal of office.

Karen Cooley

Notary Public In and For
The State of Texas

My commission expires:

