

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ESTATE OF GREGORY T. MOUNT,
DECEASED, ALLISON H. COOK,
EXECUTOR AND ALLISON H. COOK,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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) Docket No. 17390-09
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O R D E R

On January 5, 2012, the Court received and filed two motions submitted by petitioners. Both motions are directed towards the Order dated December 7, 2011, in which petitioners' motion for partial summary judgment, filed August 11, 2011, was denied following a November 23, 2011, hearing. In one of petitioners' motions now before the Court, they request that the Court reconsider the December 7, 2011, Order; in the other they request that the Court vacate that Order. Arguments in support of petitioners' motions are contained in petitioners' memorandum of law, also filed on January 5, 2012. Because both motions, in effect, request the same relief, separate consideration is not required.

Statements contained in the motions here under consideration point out that no reason(s) for the denial of petitioners' motion for partial summary judgment are provided in the December 7, 2011, Order. Reason(s) for the denial, however, can be found in the transcript of the November 23, 2011, hearing.¹ To the extent not obvious from the statements made during the hearing, petitioners' motion for partial summary judgment was denied because any ruling on the validity of an argument advanced by petitioners in support of the deduction in

¹ The hearing was conducted in Washington, D.C., even though place of trial in this case is Westbury, New York. Petitioners' counsel is located in New Jersey. In lieu of attendance at the hearing, petitioners' counsel elected to submit a written statement. See Rule 50(c), Tax Court Rules of Practice and Procedure.

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dispute in this case, if reached in the resolution of that dispute, is best left to the trial judge to whom the matter is ultimately assigned.

The December 7, 2011, Order does not rule on the validity of the position advanced by petitioners in their August 11, 2011, motion for partial summary judgment; rather the import of the Order is that any such ruling is not appropriate upon a motion for summary judgment. Consequently, petitioners' request to invoke the procedures contemplated by I.R.C. section 7482(a)(2) and Rule 193, Tax Court Rules of Practice and Procedure, is inappropriately made.

Premises considered, it is

ORDERED that petitioners' motions, both filed January 5, 2012, are denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
January 11, 2012