

In the United States Court of Federal Claims

Nos. 06-245T, 06-246T, and 06-247T
(Consolidated)

(Filed: August 16, 2010)

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MURFAM FARMS, LLC, *
By and Through Wendell H. Murphy, Jr., *
A Partner Other than Tax Matters Partner, *
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PSM FARMS, LLC, *
By and Through Stratton K. Murphy, *
a Partner Other than Tax Matters Partner, *
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MURPHY PORK PARTNERS, LLC, *
By and Through Wendell H. Murphy, Jr., *
A Partner Other than Tax Matters Partner, *
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 Plaintiffs, *
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 v. *
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THE UNITED STATES, *
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 Defendant. *
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ORDER

In its March 15, 2010 Motion to Vacate, the Government asks the Court to vacate its July 30, 2009 Opinion finding Treasury Regulation § 1.752-6 (“the regulation”) invalid. *MURFAM Farms, LLC v. United States*, 88 Fed. Cl. 516 (2009). The Government argues that the ruling has become moot as a result of the Joint Stipulation of Settled Issues entered into by the parties on September 29, 2009.

The Government explains that the regulation would have applied in this case only if the Court were to have found that the transactions at issue had economic substance. Because Plaintiffs conceded in the Joint Stipulation that the transactions at issue lacked economic substance, the Government believes the Court’s previous ruling finding the regulation invalid has become moot. According to the Government, allowing this ruling to stand “clearly prejudices the government because the validity of this regulation is still at issue in other cases” and the

Government will not have an opportunity to appeal the Court's ruling here. Def.'s Mot. to Vacate 4.

In the Court's view, the possibility that its earlier ruling invalidating the regulation will weaken Defendant's ongoing litigating position does not warrant the Court's vacating its earlier decision. As Plaintiffs' point out in opposition to the Government's Motion, debate among courts is healthy and helpful. Pls.' Opp'n 3 (citing *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18, 27 (1994)). One deciding how much weight to afford the Court's earlier ruling can ascertain the procedural history of the case and ruling without great difficulty. If the ruling is never appealed, that will be readily apparent. The Court does not believe the public interest will be served by vacating its earlier Opinion. The Government's March 15, 2010 Motion to Vacate is denied.

s/ Edward J. Damich
EDWARD J. DAMICH
Judge