

**In the United States Court of Federal Claims**

No. 10-381T

(Filed March 24, 2011)

NOT FOR PUBLICATION

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**LUCY HAMRICK POWELL and  
JAMES CLEMENT POWELL,**

Plaintiffs,

v.

**THE UNITED STATES,**

Defendant.

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**ORDER**

As plaintiffs have clarified in their papers and at oral argument on defendant’s motion to dismiss and plaintiffs’ cross-motion for summary judgment held today by telephone, plaintiffs are not seeking a refund for tax years 2007 and 2008. Plaintiffs’ references to tax amounts from those years were merely intended to acknowledge offsets affecting the amount of relief plaintiffs requested due to the alleged tax year 2006 overpayment. Since plaintiffs are not challenging their tax year 2007 and 2008 liability in this case, to the extent their complaint can be construed as seeking a refund for those years, defendant’s motion to dismiss is **GRANTED-IN-PART**.<sup>1</sup>

As was also discussed at oral argument today, plaintiffs’ cross-motion for summary judgment is **DENIED WITHOUT PREJUDICE**. There is a question as to the authority of the IRS agent to have accepted the Powells’ claim for refund after the initiation of this lawsuit. On the sole basis of the November 5, 2010 letter purporting to accept their claim, it is not beyond dispute that plaintiffs have succeeded in their claim and the corresponding amount they would be awarded. Therefore, summary judgment at this time is inappropriate. The Court does recognize that the November 5, 2010 letter may very well represent the IRS’s expert opinion on the validity of plaintiffs’ tax year 2006 claim for refund, and as a consequence, the prospect of settling that particular claim appears favorable. To that end, defendant shall file a status report on **Monday, April 25, 2011** regarding the parties’ progress towards a settlement regarding the claim of a refund for tax year 2006.

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<sup>1</sup> The Court is not deciding at this time whether it is appropriate to dismiss portions of the refund claim for tax year 2004. That opinion will issue separately.

Finally, as discussed at the hearing today, both parties will make submissions to the Court on or before **Friday, April 1, 2011**. Because portions of the left side of the IRS Certificates were inadvertently cut-off, and such portions include critically important information pertaining to dates, defendant shall file new copies of the Certificates. Plaintiffs shall submit a status report that includes: (a) a statement whether plaintiffs received the exhibits to defendant's motion to dismiss; (b) documentation regarding the \$30,428 check referenced in plaintiffs' September 17, 2006 letter to the IRS; and (c) a copy of the letter from the IRS which they received yesterday. Plaintiffs may also, in the same or a separate filing, submit to the Court their legal position concerning the applicability of 26 U.S.C. § 6402.

**IT IS SO ORDERED.**

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**VICTOR J. WOLSKI**

Judge