

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SABINA LOVING; ELMER)
KILIAN; and JOHN GAMBINO,)

Plaintiffs-Appellees,)

v.)

UNITED STATES OF AMERICA;)
INTERNAL REVENUE SERVICE;)
and DOUGLAS H. SHULMAN,)
COMMISSIONER OF INTERNAL)
REVENUE,)

Defendants-Appellants.)

No. 13-5061

**THE GOVERNMENT’S MOTION TO SET BRIEFING SCHEDULE
AND TO EXPEDITE APPEAL**

The United States of America, the Internal Revenue Service, and the Commissioner of Internal Revenue, appellants herein (together, the Government), by and through their counsel, hereby move this Court to set a briefing schedule and to expedite this appeal, pursuant to 28 U.S.C. § 1657 and the D.C. Circuit Handbook of Practice and Internal Procedures 33-34 (2011). Counsel for the Government has informed counsel for the appellees, Dan Alban, of the relief sought herein. Counsel for the appellees indicated that he consents to the briefing

schedule proposed by the Government, but takes no position on the Government's request that the appeal be expedited. In support of this motion, the Government states the following:

1. This Court has not yet issued a scheduling order in this case setting forth the filing dates for the respective briefs of the parties and the date of oral argument. The Government, nevertheless, filed its opening brief as appellant on March 29, 2013, in an attempt to expedite the resolution of its appeal.

2. Based on his discussions with counsel for the appellees, counsel for the Government proposes that: (i) appellees' answering brief be due on May 17, 2013; and (ii) the Government's reply brief be due on May 31, 2013. Pursuant to this schedule, the parties will not seek to extend the time for filing the answering or reply briefs barring emergency.

3. In addition to the above briefing schedule agreed to by the parties, the Government further requests that the Court expedite the appeal by setting oral argument for the earliest available date on its calendar. Expedited consideration of this appeal is appropriate because, as explained in the Government's brief to this Court (at pp. 4-

14, 45-46), the issue presented – *viz.*, the validity of Treasury regulations governing paid tax-return preparers – is a matter of critical importance not only to the Government, but also to the taxpaying public and to tax-return preparers such as the plaintiffs herein. In this regard, any substantial delay in resolving this matter will be both costly and unsettling for the taxpaying public, for paid tax-return preparers, and for the Government. As explained in our brief (at p. 13, n.6), December 31, 2013 is a critical date for the implementation of the return-preparer regulations. Under these regulations, paid tax-return preparers must complete a competency examination and fulfill continuing-education requirements by that date, to be eligible to prepare tax returns for compensation during the tax-preparation season beginning on January 1, 2014 (for tax year 2013). In the event this Court were to uphold the regulations, but not issue its decision until the latter part of this year, there might be insufficient time for the hundreds of thousands of return preparers who have not yet passed the competency test and completed the continuing education required by the regulation to do so by the existing deadline. Any additional delay beyond the December 31, 2013 deadline would be highly detrimental to

both the taxpaying public and the federal fisc since it would permit incompetent and unscrupulous return preparers to continue to prepare tax returns until the 2015 tax-filing season (for the 2014 tax year).

4. In light of the above, the Government respectfully requests that the Court expedite the disposition of the instant appeal by adopting the briefing schedule proposed herein and scheduling oral argument for the earliest available date.

CONCLUSION

For the reasons stated herein, this Court should issue a briefing schedule assigning May 17, 2013 as the due date for appellees' response brief and May 31, 2013 as the due date for the Government's reply brief, and, further, should expedite the resolution of this appeal by setting oral argument for the earliest available date.

Respectfully submitted,

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APRIL 2013

CERTIFICATE OF SERVICE

It is hereby certified that the Government's motion to set briefing schedule and to expedite appeal was filed with the Clerk and served on counsel for the appellees on this 1st day of April, 2013 via the CM/ECF system.

s/ PATRICK J. URDA

PATRICK J. URDA

Attorney for the Appellants