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5-16-4502

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October 21, 2013

Mark J. Langer, Esquire
Clerk, U.S. Court of Appeals
for the District of Columbia Circuit
U.S. Courthouse, Room 5423
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Sabina Loving, *et al.* v. Internal Revenue Service
(D.C. Cir. – No. 13-5061)

Dear Mr. Langer:

The instant appeal was argued before Circuit Judge Kavanaugh, and Senior Circuit Judges Sentelle and Williams on September 24, 2013. Pursuant to Fed. R. App. P. 28(j), the Internal Revenue Service draws the Court's attention to an article written by former Commissioner of Internal Revenue Lawrence B. Gibbs, which addresses the above-entitled case. Lawrence B. Gibbs, "*Loving v. IRS: Treasury Has the Authority to Regulate Unregulated Commercial Preparers*" ("Article"), Tax Notes, October 21, 2013, pp. 1-7.

In the article, former Commissioner Gibbs disputes appellees' contention that return preparers are not "representatives" within the meaning of that term as used in 31 U.S.C. § 330(a). Article at 4-7. Gibbs explains that a return preparer serves as a taxpayer's "representative" in that he "advises the taxpayer about ways to accomplish the taxpayer's objectives" and prepares "the return on the taxpayer's behalf to reflect the taxpayer's choices and to accomplish the taxpayer's objectives." *Id.* at 5. Gibbs compares return preparers to lawyers who draft wills, noting that such lawyers provide a representative service even if the client ultimately signs the document, and that return preparers, like such lawyers, can be "reasonably viewed as having represented [a] client." *Id.* Gibbs notes that the conclusion that return preparers are representatives is confirmed by the

fact that a taxpayer can authorize a return preparer to continue such representation before the IRS, if the IRS chooses to examine a return that the return preparer prepared. *Id.* Gibbs asserts that there is no indication that Congress in 1884 meant to restrict the Treasury's ability to regulate unscrupulous preparers to only those who presented claims *in person*, rather than those who prepared the claims that were ultimately submitted. *Id.* at 5-6. Gibbs thus concludes that the term "practice of representatives" is "fairly susceptible to more than one interpretation and, therefore, is ambiguous." *Id.* at 7.

We ask that you please distribute copies of this letter to the panel assigned to this case. A copy of this letter will be transmitted to opposing counsel via the CM/ECF system.

Sincerely yours,

KATHRYN KENEALLY
Assistant Attorney General
Tax Division

By: /s/ GILBERT S. ROTHENBERG
GILBERT S. ROTHENBERG
Chief, Appellate Section

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature /s/ Gilbert S. Rothenberg