

UNITED STATES COURT OF APPEALS

APR 01 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JEFFREY K. BERGMANN; KRISTINE  
K. BERGMANN,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 12-70259

Tax Ct. No. 20894-05

ORDER

Before: GOULD and PAEZ, Circuit Judges, and HUFF, District Judge.\*

The Petition for Panel Rehearing filed by Petitioners on February 28, 2014 is DENIED.

The memorandum disposition filed on January 10, 2014 is AMENDED as follows.

On page three, the sixth sentence of the first full paragraph states:

In March 2004, shortly after KPMG gave the IRS a list of SOS participants including the Bergmanns, they filed an amended return for 2001 removing all the previously-claimed losses and reporting and paying an additional \$205,979 in taxes.

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\* The Honorable Marilyn L. Huff, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

That sentence is deleted in its entirety and replaced with:

In March 2004, shortly before KPMG gave the IRS a list of SOS participants including the Bergmanns, they filed an amended return for 2001 removing all the previously-claimed losses and reporting and paying an additional \$205,979 in taxes.

The second to last sentence of the memorandum disposition states:

In this case, once KPMG had been told of an investigation and given the Bergmanns' names to the IRS, the record fails to demonstrate that their amended return was voluntary or saved IRS resources.

That sentence is deleted in its entirety and replaced with:

In this case, KPMG had been told of an investigation. The record does nothing to establish that the amended return was voluntary or saved the IRS resources.

No further petitions for rehearing or rehearing en banc will be accepted.

**IT IS SO ORDERED.**