

In the United States Court of Federal Claims

No. 09-283

(Filed December 30, 2014)

NOT FOR PUBLICATION

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LOUIS J. BALESTRA JR. and
PHYLLIS M. BALESTRA,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

* * * * *

ORDER

At the time the memorandum opinion granting summary judgment to the defendant was issued, the Court had not chosen to publish it in the Federal Claims Reporter. *See Balestra v. United States*, No. 09-283T, 2014 WL 2443767 (Fed. Cl. May 31, 2014). The government has since requested publication, arguing that legal issues decided in the opinion were matters of first impression and that publication of the opinion would be of assistance to tax practitioners. *See* Req. for Publ'n, ECF No. 89, at 1–2. As precedents our opinions are, of course, only persuasive at best, even among our colleagues, *see CBY Design Builders v. United States*, 105 Fed. Cl. 303, 332 n.23 (2012), and publication probably does not make them more easily found or cited by litigators. Nor should publication affect the persuasiveness of an opinion, as the discretionary decision to publish turns on such subjective factors as whether the author believes the opinion adds significantly to the body of law or is of widespread interest.

Decisions granting dispositive motions are often published, perhaps under the suspicion that the grounds for deciding a particular case are of interest to litigants in similar cases. The major exception is the category of cases litigated *pro se*, in which the issues are presented, framed, and litigated without the benefit of counsel on both sides. That this matter originated as a *pro se* proceeding, until plaintiffs' counsel graciously agreed to take it on, initially disposed the undersigned

not to publish the opinion granting judgment. Upon reflection, the Court concludes that the opinion did address novel issues, the resolution of which should have been published. Accordingly, the government's request for publication is **GRANTED**, and the opinion will be reissued for publication with some minor, non-substantive corrections.

IT IS SO ORDERED.

s/ Victor J. Wolski
VICTOR J. WOLSKI
Judge