

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

STORAGE AND OFFICE SYSTEMS, LLC,)
)
 Plaintiff,)
)
 v.) CASE NO. 4:04-cv-0190-DFH-WGH
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

ENTRY ON PENDING MOTIONS

The court entered final judgment for plaintiff on March 30, 2007, and the United States has chosen not to appeal. Several matters are pending.

First, plaintiff has moved for an award of attorney fees and costs under 26 U.S.C. § 7430. The United States initially responded by arguing that the motion was premature because time to appeal the final judgment had not yet run. Whether that was correct or not, the time to appeal has now run. The court will therefore deem plaintiff's motion and the United States' opposition as having been filed today, June 5, 2007.

In its response, the government challenged the adequacy of plaintiff's showing of both its financial qualifications for a fee award under § 7430 and any special circumstances that would support a higher hourly rate for the time of

attorney James Martin. In the court's experience under the Equal Access to Justice Act, 28 U.S.C. § 2412, it is common for a petitioning party to file a rather bare-bones petition so as to minimize further time and fees devoted to undisputed issues. Instead, the petitioning party leaves further development for a reply after the government identifies the disputed issues. That approach was and is sensible here.

Accordingly, plaintiff shall file any reply brief in support of its motion for fees and costs no later than June 20, 2007. In addressing any relevant issue, the reply may include affidavits or other appropriate evidence on the financial qualification issue and the special circumstances, and a supplement to the initial fee request to include more recent work. Unless either side promptly seeks a further opportunity to be heard (either orally or through an additional document), the court will treat the plaintiff's motion for fees and costs as ripe for ruling.

Second, plaintiff filed on April 23, 2007 a motion to amend the complaint to add a claim for economic loss. The motion relied upon 26 U.S.C. § 7426(h). The government promptly responded by pointing out that 26 U.S.C. § 7426(h) is inapplicable because plaintiff did not pursue this case under § 7426. Plaintiff responded to that point by filing on May 25, 2007 a second motion to amend the complaint, relying on 26 U.S.C. § 7432, which may apply more broadly. The second motion includes a different proposed amended complaint. Accordingly,

plaintiff's first motion, Docket No. 44, is hereby denied. The United States shall file any response to the second motion no later than June 20, 2007.

So ordered.

Date: June 5, 2007

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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