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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. C 09-03403 WHA

v.

WILLIAM B. DENKERS and GLORY M.
DENKERS,

**ORDER GRANTING MOTION
FOR LEAVE TO RECONSIDER**

Defendants.

INTRODUCTION

In this federal tax collection action, the government seeks leave to file for reconsideration of the April 23 order granting defendants motion for reconsideration, and to reinstate its previous summary judgment order of March 29, 2010. For the reasons discussed below, the motion for leave to file a motion for reconsideration is **GRANTED**.

STATEMENT

Defendants William B. Denkers and Glory M. Denkers filed joint U.S. individual income tax returns for the tax years of 1995, 1996, 1997, 1998, 1999, 2000, and 2001 (Stamm Decl. Exhs. 8–13). They readily admit, however, that they did not pay the full amount owed for any of these tax years due to a variety of medical ailments and related expenses (G. Denkers Decl. ¶¶ 2–13). The IRS made assessments against defendants pursuant to these seven joint income tax returns. During these seven years, defendants unsuccessfully attempted to reach a compromise with the

1 IRS over their unpaid tax liabilities (G. Denkers Decl. ¶¶ 14–15). On July 24, 2009, the United
2 States filed this action pursuant to 26 U.S.C. 7402(a) to reduce defendants’ federal income tax
3 assessments for tax years 1995 through 2001 to judgment (Dkt. 1).

4 On March 29, 2010, summary judgment was granted for the government. Subsequently,
5 on April 16, defendants sought leave to move for reconsideration. On April 23, defendants
6 received leave to move for reconsideration on the specific issue of the applicable tolling period
7 for the Collection Statute Expiration Date. The order set a specific briefing schedule for the
8 parties. Defendants filed their motion by the appropriate deadline, May 6, 2010. Defendants
9 argued that after they had filed their opposition to the government’s motion for summary
10 judgment, the government produced documents that changed how the applicable tolling period
11 should be calculated. The change in calculation would affect defendants’ tax assessments for at
12 least one of the years in question.

13 The government failed to file an opposition by the May 13 deadline. Accordingly, the
14 motion for reconsideration was granted on May 26. On July 8, the government filed a motion
15 to seek leave of the Court to reconsider its April 23 order and requested full reinstatement
16 of summary judgment. The government claims that the attorney responsible for replying to
17 defendants’ motion did not receive or inadvertently deleted the order setting out the briefing
18 schedule on the matter. The government claims to have been unaware of the schedule until
19 June 3, and seeks leave to file a motion to reconsider the April 23 order.

20 **ANALYSIS**

21 The government acknowledges that its motion is untimely. It moves for leave to file
22 a motion for reconsideration, maintaining, that there exist no genuine issues of material fact.
23 The government contends that even if it admitted defendants’ claims about the mistaken
24 calculation of the tolling period, it still filed suit within the appropriate statute of limitations.
25 The government asserts that summary judgment is still proper. Rule 60 states that grounds for
26 relief from an order can include mistake, fraud, or misrepresentation by an opposing party.
27 The discrepancy in the parties’ calculation of the tolling period must be resolved.
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