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 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

HEWLETT-PACKARD COMPANY, AND
 CONSOLIDATED SUBSIDIARIES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 09-02882 LHK

**JOINT MOTION TO CONTINUE
 STAY OF PROCEEDINGS;
~~PROPOSED~~ ORDER**

Plaintiff Hewlett-Packard Company ("HP") and Defendant United States of America,
 (collectively, "the Parties"), by and through their undersigned counsel, respectfully move the Court

1 to continue the stay of the above-captioned case which currently expires on October 29, 2010, until
2 March 18, 2011 to permit continuing related litigation in the United States Tax Court, as further
3 described below, as well as to permit the Internal Revenue Service's Appeals function to prepare tax
4 computations for subsequent tax years (including tax years at issue before the United States Tax
5 Court), from which certain tax attributes will carryback to the years before this Court, and to secure
6 review and approval of the Parties' settlements by the Joint Committee on Taxation of the U.S.
7 Congress . In support of this motion, the Parties state the following:

8 1. Plaintiff HP filed a Complaint for Tax Refund ("Complaint") on June 26, 2009, seeking
9 the recovery of at least \$248,583,832 in Federal income taxes and interest for HP's taxable years
10 ended October 31, 1994, October 31, 1995, and October 31, 1998 (the "1994, 1995 and 1998 tax
11 years"), plus statutory interest thereon as provided by law. On October 23, 2009, Defendant United
12 States of America filed its Answer.

13 2. Consistent with the Notice of Pendency of Other Action or Proceeding filed by HP on
14 June 26, 2009, there are two related actions pending before the United States Tax Court: (i) *Hewlett-*
15 *Packard Company, and Consolidated Subsidiaries v. Commissioner of Internal Revenue*, Docket No.
16 21976-07, and (ii) *Hewlett-Packard Company, and Consolidated Subsidiaries v. Commissioner of*
17 *Internal Revenue*, Docket No. 10075-08. These two Tax Court matters involve issues for HP's tax
18 years ended October 31, 1999, October 31, 2000, October 31, 2002, and October 31, 2003 (the
19 "1999, 2000, 2002 and 2003 tax years," respectively), and have been consolidated for trial, briefing
20 and opinion by the Tax Court. The resolution of the tax issues pending before the Tax Court in the
21 consolidated Tax Court dockets will affect, and for certain issues directly control, the amount of
22 refunds of federal income tax and interest that HP is entitled to receive under the action filed before
23 this Court.

24 3. HP and the Internal Revenue Service have resolved many, but not all, of the issues in the
25 Tax Court matters pursuant to Settlement Stipulations filed with the Tax Court, and Closing
26 Agreements related to other affected years not pending before the Tax Court. The Parties'
27 settlements, and any tax refunds for the 1994, 1995 and 1998 tax years before this Court resulting
28 from those settlements, must be reported by the IRS to the Joint Committee on Taxation of the U.S.

1 Congress (“JCT”) pursuant to 26 U.S.C. § 6405(a) before payment of those refunds. The Parties are
2 cooperating in preparing the income tax computations and settlement reports for the tax years 1994
3 through 2003, which the JCT will review. Additional issues pending in the consolidated Tax Court
4 cases remain to be resolved by settlement or trial.

5 4. Subsequent to the filing of the Complaint herein, the U.S. Tax Court determined that it
6 had jurisdiction to determine the amount of foreign tax credits that originate in the 1999 tax year that
7 carryback to the 1998 tax year. A trial was held on September 13, 2010 through September 20, in
8 consolidated U.S. Tax Court Docket Nos. 21976-07 and 10075-08, with respect to one disputed
9 issue, the Foppingadreef foreign tax credit issue, which is related to the issue described in
10 paragraphs 69 to 102 of the Complaint. The Tax Court has ordered HP and the Internal Revenue
11 Service to submit simultaneous post-trial briefs on December 15, 2010 and on February 17, 2011.

12 5. On January 14, 2010 this Court stayed this case until October 29, 2010 to permit the Tax
13 Court matters to proceed.

14 6. The Parties believe that resolution of the Tax Court matters will simplify and
15 substantially reduce the number of issues before this Court, and that it is therefore in the best
16 interests of judicial economy to further stay this case until March 18, 2011 to permit completion of
17 post-trial briefs and resolution of additional issues in Tax Court consolidated Docket Nos. 21976-07
18 and 10075-08, as well as to allow the Internal Revenue Service Appeals function to finalize
19 computations, and to obtain JCT review and approval of the settlements for subsequent tax years
20 from which certain tax attributes will carry back to the years before this Court.

21 7. In connection with this Motion to Stay, the Parties jointly move this Court to order that
22 the parties file a Joint Case Management Statement on March 16, 2011 and schedule a Case
23 Management Conference for March 23, 2011.

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Respectfully submitted by:

Dated: October 8, 2010

MELINDA HAAG
United States Attorney

Dated: October 8, 2010

BAKER & MCKENZIE LLP

By: /s/ Jason Bergmann
Jason Bergmann
U.S. Department of Justice, Tax Division
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UNITED STATES OF AMERICA

By: /s/ Scott H. Frewing
Scott H. Frewing
Attorneys for Plaintiff
HEWLETT-PACKARD COMPANY

Pursuant to General Order No. 45, Section X(B), Scott H. Frewing hereby attests that the
signatory's concurrence in the filing of this document has been obtained.

~~PROPOSED~~ ORDER

It is so ORDERED.

Dated: October 13, 2010


LUCY H. KOH
UNITED STATES DISTRICT JUDGE