



## United States Tax Court

Washington, DC 20217

Mark Betz & Christine Betz, et al.,	)	
	)	
Petitioners	)	
	)	
v.	)	Docket No. 21587-18,
	)	21588-18.
Commissioner of Internal Revenue,	)	
	)	
Respondent	)	

### **ORDER**

These cases are calendared for remote trial at the Court's Special Session commencing on March 8, 2021. A review of the record in this case shows that the parties engaged in formal discovery pursuant to Rule 90, Tax Court Rules of Practice and Procedure, and petitioners' have since filed two Motions to Review the Sufficiency of Answers or Objections to Requests for Admissions that are currently pending before the Court.<sup>1</sup>

Pursuant to the Court's Order dated October 13, 2020, the parties were required to serve all requests for admissions by October 19, 2020, and file all motions to review the sufficiency of answers or objections to request for admissions by November 19, 2020.

#### **I. Petitioners' Requests for Admissions**

On October 12, 2020, petitioners filed a First Request for Admissions with attached exhibits. On November 10, 2020, respondent filed a Response to petitioners' first request for admissions denying each request for admission and stating, "[a]s to whether said proposal pertains to the stated project, respondent has made a reasonable inquiry and the information known or readily obtainable by him is insufficient to enable him to admit or deny this matter."

On October 19, 2020, at 11:46 p.m., petitioners filed a Second Request for Admissions that consisted of 922 separate paragraphs. On October 20, 2020, between 12:24 a.m. and 3:19 a.m., petitioners filed six additional Second Requests for Admissions that consisted of the 854 exhibits referenced in the paragraphs of

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<sup>1</sup> All Rule references are to the Tax Court Rules of Practice and Procedure.

petitioners' Second Request for Admissions filed October 19, 2020. On October 22, 2020, respondent filed a Motion for Extension of Time asserting that the breadth and complexity of the matters set forth in petitioners' second request for admissions make it impracticable for him to prepare a response within 30 days of service, and on November 5, 2020, the Court granted respondent's Motion for Extension of Time.

On December 28, 2020, pursuant to the Court's Order dated November 5, 2020, respondent filed a Response to petitioners' second request for admissions, in which respondent objected to each request for admission that referenced an exhibit and stated: "Objection. Pursuant to the Court's Order dated October 13, 2020, the parties were required to serve all requests for admissions by October 19, 2020. Without waiving other grounds for objection, each of paragraphs 10 through 922 of Petitioners' Second Request for Admissions pertains to exhibits which were untimely filed and served on October 20, 2020."

II. Motions to Review the Sufficiency of Answers or Objections to Request for Admissions

On November 20, 2020, petitioners filed a Motion to Review the Sufficiency of Answers of Objections to Request for Admissions (motion to review the sufficiency of answers), therein asking the Court to review the sufficiency of respondent's answers to petitioners' first request for admissions.

On January 15, 2021, respondent filed a Response objecting to petitioners' motion to review the sufficiency of answers filed November 20, 2020, on the ground that the motion was untimely filed pursuant to the Court's Order dated October 13, 2020.

On January 11, 2021, petitioners filed a second Motion to Review the Sufficiency of Answers or Objections to Request for Admissions (second motion to review the sufficiency of answers), therein asking the Court to review the sufficiency of respondent's answers to petitioners' second request for admissions.

On January 20, 2021, pursuant to the Court's Order dated January 11, 2021, respondent filed a Response objecting to petitioners' motion to review the sufficiency of answers. On January 21, 2021, petitioners filed a Motion for Leave to File Reply to Response to motion to review the sufficiency of answers and lodged a Reply to Response to motion to review the sufficiency of answers.

Rule 91(e) provides that “the party who has requested the admissions may move to determine the sufficiency of the answers or objections.” Rule 91(e) further provides that “[u]nless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, then it may order either that the matter is admitted or that an amended answer be served.”

Because the Court finds that respondent was not prejudiced by petitioners’ late filing, we will overrule his objection and direct respondent to file an amended response to petitioners’ Motion to Review the Sufficiency of Answers or Objections filed November 20, 2020.

The Court further finds that respondent’s objections to paragraphs 5, 6, 7, and 10 through 922 of petitioners’ Second Request for Admissions filed October 19, 2020, on the ground that petitioners’ exhibits pertaining to said paragraphs was untimely filed on October 20, 2020, is not justified.

As petitioners’ explained in their second motion to review the sufficiency of answers filed January 11, 2021, and in their Reply to Response to motion to review the sufficiency of answers lodged January 21, 2021, petitioners were not able to file their Second Request for Admissions with exhibits as one document because the electronic filing system could not handle the number of documents. As a result, petitioners had to file the exhibits to their Second Request for Admissions in separate batches, and successfully filed all exhibits by October 20, 2020, at 3:19 a.m. The Court has no reason to believe that respondent was prejudiced by the 3 hour and 19 minute delay and, in fact, the Court granted respondent’s Motion for Extension of time to file his response to petitioners’ second request for admissions.

Accordingly, the Court will overrule respondent’s objections to petitioners’ Second Request for Admissions and will direct respondent to file an amended response to petitioners’ second request for admissions filed October 19, 2020.

The Court strongly encourages the parties to meet and work together to narrow the issues for trial and stipulate to the fullest extent possible. We take this opportunity to advise the parties that the informal discovery process is essential for the voluntary exchange of facts and documents that enable preparation of stipulations and “the more expeditious trial of cases.” Branerton Corp., 61 T.C. at 692. The parties must participate in this process and, in the course of doing so, we expect them to cooperate informally or formally if necessary.

The Court reminds the parties that these cases remain calendared for remote trial at the Court's Special Session commencing March 8, 2021. Therefore, if these cases cannot be otherwise disposed of prior to that date, the parties should be prepared to present their evidence and arguments as efficiently as possible at trial.

Upon due consideration and for cause, it is

ORDERED that petitioners' Motion for Leave to File Reply to Response to Motion to Review the Sufficiency of Answers or Objections to Request for Admissions filed January 21, 2021, is granted and petitioners' reply lodged January 21, 2021, shall be filed as of the date of this Order. It is further

ORDERED that petitioners' Motion to Review the Sufficiency of Answers or Objections to Request for Admissions filed November 20, 2020, is granted in part, in that respondent's objections that petitioners' motion was untimely filed is overruled. The Court will hold the remainder of petitioners' Motion to Review Sufficiency of Answers or Objections to Request for Admissions filed November 20, 2020, in abeyance. It is further

ORDERED that on or before February 17, 2021, respondent shall file with the Court and serve on petitioners an amended response to their Motion to Review the Sufficiency of Answers or Objections to Request for Admissions filed November 20, 2020, explaining why his answers to the First Request for Admissions were sufficient and why the Court should not grant petitioners' motion. It is further

ORDERED that petitioners' Motion to Review the Sufficiency of Answers or Objections to Request for Admissions filed January 21, 2021, is granted in that respondent's objections to petitioners' requests for admissions in paragraphs 5, 6, 7, and 10 through 922 of their Second Request for Admissions filed October 19, 2020, are overruled. It is further

ORDERED that on or before February 17, 2021, respondent shall file with the Court and serve on petitioners an amended answer to petitioners' Second Request for Admissions filed October 19, 2020. It is further

ORDERED that the Court expects the parties to cooperate in compliance with the Court's Standing Pretrial order issued November 15, 2019, except to the extent modified by the schedule set forth in the Court's pretrial order of October 13, 2020.

**(Signed) Joseph W. Nega**  
**Judge**