

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOSE & MIRTHA ANDRADE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 8556-11.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER

On June 20, 2012, petitioners filed, pursuant to Rule 90(f), a motion for leave to withdraw deemed admissions, and lodged with the Court an overdue response to respondent's 49 requests for admissions filed January 6, 2012. On July 6, 2012, respondent filed an objection to the motion, in which respondent argues that the granting of the motion would result in prejudice but describes that prejudice in future and contingent terms. It is therefore

ORDERED that petitioner's motion is granted in part as to requests 1, 46, 47, 48, and 49, which are summary and conclusory, and which contradict petitioners' basic assertions in this case which have long been known to respondent. It is further

ORDERED that petitioners' motion is denied in part, as to (a) requests 2, 4, 6, 7, 9, 10, 12, 14, 15, 20, and 31, because in petitioners' untimely response those requests are admitted without qualification, (b) requests 5 and 8, because in petitioners' untimely response those requests are purportedly denied in part not on the basis of contrary information but rather on the basis of petitioners' alleged lack of information, (c) request 16, because in petitioners' untimely response that request is purportedly denied in part on the supposed issue of ownership, which issue is in fact not a part of the requested admission (which rather addresses the issue of dominion and control), and (d) requests 41 and 42, because in petitioners' untimely response those requests are purportedly denied in part on the supposed issue of taxability, which issue is in fact not a part of the requested admissions (which rather address the issue of reporting). It is further

ORDERED that petitioner's motion is otherwise taken under advisement as to the 33 remaining deemed admissions. The Court will hear argument on the remaining portion of petitioner's motion either at the calendar call on October 22, 2012, or at the commencement of the trial in this case. In deciding the motion, the Court will take into account all relevant facts, including (a) the parties' cooperation in discovery and in the stipulation process, (b) the parties' compliance or noncompliance with the rules and orders of the Court, (c) affirmative evidence that petitioners present to contradict the deemed admissions, and (d) any actual prejudice that respondent would suffer from the withdrawal of the deemed admission, taking into account that

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the requests for admissions were served four months before the then-ordered trial date, so that timely denials would have been served only three months before the trial so scheduled, whereas the untimely responses were served four months before the now-pending trial date. As to the remaining portion of petitioners' motion now taken under advisement, the parties are encouraged to resolve it by disclosure and cooperation during the stipulation process.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
July 11, 2012