



United States Tax Court

Washington, DC 20217

Emilio M. Cerejo & Dawn H. Cerejo,	)	
	)	
Petitioner	)	
	)	
v.	)	Docket No. 23204-16.
	)	
Commissioner of Internal Revenue,	)	
	)	
Respondent	)	

ORDER

Respondent filed his first, second and third request for admissions on March 5, 2021, March 15, 2021 and April 30, 2021, respectively (hereinafter collectively "Requests for Admissions"). On April 27, 2021, April 30, 2021 and May 5, 2021, respectively, petitioner served on respondent his responses to respondent's Requests for Admissions.

On July 19, 2021, respondent filed a motion to review the sufficiency of petitioners' answers or objections to respondent's requests for admissions. On August 16, 2021, petitioners file a response to respondent's motion to review the sufficiency of petitioners' answers or objections to requests for admissions. On October 5, 2021, respondent filed a reply to petitioner's response.

Respondent's July 19, 2021 motion requests that "the Court enter an order directing petitioners to (1) provide responses to the specific admissions outlined [in the motion] which responses shall comport with the requirements of Tax Court Rule 90(c) including, for any admission for which petitioners lack sufficient information to admit or deny, a statement that petitioners made reasonable inquiry and that the information known or readily obtainable by petitioners is insufficient to enable them to admit or deny; and (2) for any admission for which petitioners lack sufficient information to admit or deny, provide a description of the actions taken to make reasonable inquiry as to the requested admission."

Respondent's reply to petitioners' response seeks the following additional relief:

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“a. The Court enter an order directing Emilio to provide a description of the actions taken to make reasonable inquiry as to the requested admission including a description of his attempts to contact Richard Reed who is his former representative.”

“b. The Court enter an order directing Emilio to provide a description of the actions taken to make reasonable inquiry as to requested admissions 143, 169, 151, 142, and 189. Respondent requests that the order directs Emilio to: include a description of the actions taken to obtain and compare the bank records either in his possession, in the possession of Dawn, in the possession of Emilio or Dawn’s current or former representatives, or available to either of them as a customer of the banks whose records are the subject of the requested admissions.”

“c. The Court enter an order directing the individual acting on behalf of Dawn pursuant to Tax Court Rule 60(d) to provide a description of the actions taken to make reasonable inquiry as to requested admissions that Dawn has denied for lack of knowledge. Respondent requests that the order directs the individual acting on behalf of Dawn, pursuant to Tax Court Rule 60(d), to: (1) include a description of the actions taken to obtain information from Dawn’s husband, guardian, and co-petitioner, Emilio; (2) include a description of the actions taken to obtain and compare the bank records either in Emilio’s possession, in the possession of Dawn, in the possession of Emilio or Dawn’s current or former representatives, or available to either of them as a customer of the banks whose records are the subject of the requested admissions.”

Respondent’s reply also seeks the following additional relief from the Court:

“a. The Court enter an order requiring the responses filed on behalf of both parties to provide the statement required by Tax Court Rule 90(c) for all the Requested Admissions which the parties have denied for lack of knowledge.”

“b. The Court enter an order directing petitioners to make reasonable inquiry to determine the facts necessary to respond to Requested Admissions 143 and 144 and that the requested order specifically direct Emilio to contact Caixa Geral de Depositos, as well as his former representative who provided Exhibit AA to the revenue agent so Emilio can compare each page of Exhibit AA to any records he obtains pursuant to his efforts. Respondent also requests that the Court’s Order direct Emilio to provide a description of his efforts to comply with Tax Court Rule 90.”

“c. The Court enter an order directing petitioners to make reasonable inquiry to determine the facts necessary to respond to Requested Admission 145 and any other Requested Admission pertaining to Caixa Geral de Depositos and to thereafter confer with their attorneys to provide a response for each of these requested admissions that conforms to the requirement of Tax Court Rule 90. Respondent also requests that the order specifically: 1) direct Emilio to contact Caixa Geral de Depositos, as well as his former representative who provided Exhibit AA to the revenue agent so Emilio and his attorneys can compare each page of Exhibit AA to any records he obtains pursuant to his efforts, and 2) direct Emilio to provide a description of his efforts to comply with Tax Court Rule 90.”

“d. The Court enter an order directing petitioners to make reasonable inquiry to determine the facts necessary to respond to Requested Admission 169 and that the requested order specifically direct Emilio to contact Banque Cantonale Vaudoise, any person or entity which managed the account on his behalf, as well as his former representative who provided Exhibit AE to the revenue agent to obtain the records necessary so Emilio and the person acting on Dawn’s behalf can compare those records to each page of Exhibit AE. Respondent also requests the Court’s Order to direct Emilio to provide a description of his efforts to comply with Tax Court Rule 90.”

“e. The Court enter an order directing petitioners to make reasonable inquiry to determine the facts necessary to respond to Requested Admission 151 and that the requested order specifically direct Emilio and the person acting on Dawn’s behalf to contact UBS and any person or entity which managed the account on their behalf to obtain the bank’s records so Emilio and the person acting on Dawn’s behalf can compare each page of those records to Exhibit AB.”

“f. The Order to direct Emilio and the person acting on Dawn’s behalf to make reasonable inquiry to determine the facts necessary to respond to all Requested Admissions which the parties have denied for lack of information and to provide a description of their efforts to comply with Tax Court Rule 90.”

Rule 90(c), in part, provides:

Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the requesting party: (1) A written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so; or (2) an objection, stating in detail the reasons therefor.

* * *

A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of a matter, such party shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny.

Rule 90(e) provides:

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless 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. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

In summary, respondent's reply (¶6) requests the Court to determine the sufficiency of petitioners' answer to Requests for Admissions #s 142, 143, 144, 145 151, 169, 189 and 223. Respondent, based on his reply, is no longer seeking the Court to review the sufficiency of petitioners' answers to Requests for Admissions #s 71, 189, 190 and 194. Respondent's reply also requests that the Court order petitioners to provide a statement, as required by Rule 90(c) for all of the Requests for Admissions which were denied by petitioners for lack of knowledge.¹

The Court has reviewed the motion papers of the parties, as well as petitioners' answers to the Requests for Admissions remaining at issue in respondent's motion. Considering Rule 90, the Court may only have the matter deemed admitted or require an amended answer to be served. Much of the relief

¹ According to respondent, petitioner Emilio Cerejo has admitted 67 Requests for Admissions, however Dawn Cerejo has denied these same 67 Requests for Admissions, although she is incapacitated and Emilio is her guardian ad litem.

being sought by respondent is outside the parameters of Rule 90.

The Court finds petitioners' answers to Requests for Admissions #s 143, 144, 145, 151, and 169, to be incomplete and not compliant with Rule 90(c), in that petitioners have failed to establish in their answers whether the party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny the request. The Court further finds generally that for those answers in which either petitioner has denied based on lack of information, to be incomplete and not compliant with Rule 90(c), in that petitioners have failed to establish in their answers whether or not the petitioner has made a reasonable inquiry and the information known or readily obtainable is insufficient to enable such party to admit or deny the request.

Finally, upon further request of respondent by motion, the Court will review the sufficiency of petitioners' amended answers, to then determine if the specific Requests for Admissions should be deemed admitted.

Considering the foregoing, it is

ORDERED that respondent's July 19, 2021 motion to review the sufficiency of answers or objections to requests for admissions is granted, in part, and petitioners shall, on or before November 19, 2021, file amended answers to respondent's Requests for Admissions #s 143, 144, 145, 151, 169. It is further

ORDERED that respondent's July 19, 2021 motion to review the sufficiency of answers or objections to requests for admissions is denied, in part, to the extent it seeks amended answers to Requests for Admissions #s 142, 189, and 223. It is further

ORDERED that respondent's July 19, 2021 motion to review the sufficiency of answers or objections to requests for admissions is granted, in part, and petitioners shall, on or before November 19, 2021, file amended answers to those Requests for Admissions in which petitioners' answer denied for lack of information and in which the answer fails to state whether or not petitioner has made a reasonable inquiry, and the information known or readily obtainable is insufficient to enable the petitioner to admit or deny the request.

(Signed) Christian N. Weiler
Judge