



United States Tax Court

Washington, DC 20217

MICHAEL DAVIS & AMY L. DAVIS, ET
AL.,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket Nos. 14870-20, 14875-20.

ORDER

These consolidated cases involve a charitable contribution deduction claimed by petitioners, Michael Davis (Davis) and Jonathan Gallant (Gallant), for a conservation easement. Respondent disallowed this deduction and determined an accuracy-related penalty. On June 8, 2023, respondent filed his (1) Motion to Compel Production of Documents, (2) Motion to Compel Responses to Interrogatories, (3) Motion to Review the Sufficiency of Answers or Objections to Request for Admissions, and (4) Motion to Review the Sufficiency of Answers or Objections to Request for Admissions. Petitioners filed their responses to the above-referenced motions on July 7, 2023. On July 20, 2023, this Court denied respondent's Motion to Review the Sufficiency of answers, as related to respondent's Second Request for Admissions. Respondent's Motion to Review Sufficiency of Answers as it relates to respondent's Third Request for Admissions is currently before the Court.

Background

The following facts are derived from the parties' pleadings, motion papers, and exhibits as attached thereto. These facts are stated solely for the purpose of deciding the motions before us and not as findings of fact in this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

These cases involve the donation of a conservation easement on 9.92 acres of property located in DeKalb County, Georgia. Davis and Gallant are co-founders of D&G Development Group. D&G Acquisition, LLC (D&G) is an entity within D&G Development Group which is co-owned—50-50—by Davis and Gallant. Both Davis and Gallant are responsible for the day-to-day operations of D&G Development Group.

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D&G reported a deduction of \$2,510,000 as a charitable contribution of the conservation easement on their 2016 partnership tax return. Each partner's portion of the deduction from the conservation easement was reported on their 2016 tax returns, filed with the status of married filing jointly. Respondent disallowed the flow-through deductions reported by Davis and Gallant in notices of deficiency issued on September 15, 2020. Davis and Gallant filed separate petitions with the Court on December 16, 2020, seeking redetermination of their deficiencies. Pursuant to an Order of this Court, these cases were consolidated for trial, briefing, and opinion on June 7, 2022.

Discussion

I. Discovery Standard

Rule 70(b)¹ permits discovery concerning “any matter not privileged, and which is relevant to the subject matter involved in the pending case.” *Bernardo v. Commissioner*, 104 T.C. 677, 682 (1995). The party objecting to discovery has the burden of establishing that the information sought is not relevant or otherwise not discoverable. *See Rosenfeld v. Commissioner*, 82 T.C. 105, 112 (1984); *Rutter v. Commissioner*, 81 T.C. 937, 948 (1983); *Branerton Corp. v. Commissioner*, 64 T.C. 191, 193 (1975). Rule 70(b) directs that the scope of discovery includes all information and responses that concern any non-privileged matter that is relevant to the subject matter involved in the case. Under our rule, if the information or response sought “appears reasonably calculated to lead to discovery of admissible evidence” then it is properly within the scope of discovery, even if the information being sought will likely be inadmissible at trial.

II. Analysis

A. Motion to Compel Production of Documents

Pursuant to Rules 72(b) and 104(b), respondent seeks to compel petitioners to produce documents, as set forth in respondent's second request for production of documents. Respondent seeks (1) supporting documents of the federal tax reporting by the Gallant petitioners about whether they carried over (and deducted) on their personal tax returns in 2017 and 2018 the unused portion of the D&G deduction for the transaction at issue, and (2) supporting documents regarding whether D&G claimed a state tax credit for the same conservation easement at issue in this case.

Requests Nos. 1 and 2 are related to whether the Gallant petitioners carried forward the unused portion of their charitable contribution deduction to taxable years 2017 and 2018. Respondent represents that the Gallant petitioners indicated that they had not claimed the full deduction amount on their return and did not carry

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

forward the deduction. Respondent asserts that they have attempted to verify this statement, but inconsistent information was reported on the 2017 and 2018 Gallant tax returns, so respondent seeks to clarify this inconsistency. This question has previously been the subject of discovery requests. Respondent seeks the production of documents 1 and 2 to corroborate the prior responses of the Gallant petitioners to interrogatories.

Respondent, in requests Nos. 3 and 4, seeks the Georgia state tax returns for 2016, 2017, 2018, and 2019 for both Davis and Gallant petitioners. Respondent asserts that this is relevant to the utilization of the deduction by petitioners and whether they acted with reasonable belief and in good faith after they became aware of problems with the appraisal. Respondent represents that these taxable years are relevant since 2016 was the year the easement was contributed, and the charitable donation was claimed and 2019 was the year that Georgia accepted the easement into the Conservation Tax Credit Program.

Petitioners objected to all four requests as not relevant in their initial response to respondent. In their response to respondent's Motion to Compel Production of Documents, petitioners assert that respondent has not sufficiently established that the requested documents are relevant to this matter and that tax years 2017 and 2018 are after the year in question (2016) and therefore beyond the scope of this case.

We disagree with petitioners and conclude that they have not carried their burden overcoming the presumption that the information being sought is irrelevant or will not lead to the discovery of relevant information. Accordingly, we will grant respondent's Motion to Compel Production of Documents as to these requests. We direct petitioners to supplement their responses to requests Nos. 1, 2, 3, and 4 and make responsive documents available to respondent within 30 days from the date of service of this Order.

B. *Motion to Compel Responses to Interrogatories*

Rule 71(b) provides that answers to interrogatories "shall be made...as completely as the answering party's information shall permit" subject to the requirement that the answering party "make reasonable inquiry and ascertain readily obtainable information." The Rule further specifies that an "answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer," unless the party states that it has made reasonable inquiry and that its information is insufficient to enable the person to provide an answer to the interrogatory. *Id.*

In his motion, respondent seeks to compel a response regarding the amount, if any, of unused deduction that petitioners, Jonathan and Sarah Gallant, carried over and deducted on their 2017 and 2018 tax returns. Respondent represents that petitioners allege that the actual amount at issue in this proceeding is not the full amount of the D&G deduction as petitioners did not claim the full deduction and did not carry forward the unused portion. Respondent has not been able to verify this

statement and represents that Gallant petitioners reported inconsistent information on their 2017 and 2018 tax return. Interrogatory Nos. 1 and 2 seek information as to whether the charitable contribution amounts claimed on the Gallant petitioners' 2017 and 2018 tax return stem from the conservation easement donation transaction in 2016.

In their response to interrogatory Nos. 1 and 2, petitioners object to the request as not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Petitioners, in their Response to Motion to Compel Responses to Interrogatories, further contend that the information is not relevant, and that respondent has put forth no argument demonstrating to the Court why it is relevant.

We disagree with petitioners and conclude that they have not carried their burden overcoming the presumption that the information being sought is irrelevant or will not lead to the discovery of relevant information. Accordingly, we will grant respondent's Motion to Compel Responses to Interrogatories, and direct petitioners to supplement their responses to interrogatory Nos. 1 and 2 within 30 days from the date of service of this Order.

C. Motion to Review Sufficiency of Answers

Rule 90 provides that admissions are permissible after the parties attempt to fulfill their requests through informal consultation or communication first. The matter will be deemed admitted unless the party responding to the request admits or denies the matter, in whole or in part, or asserts why it cannot be truthfully admitted or denied or details the reasons for an objection. Rule 90(c). A party "may not give lack of information or knowledge as a reason for failure to admit or deny unless...the party has made reasonable inquiry" and the known information is insufficient for an admission or denial. *Id.* A party who has requested admissions under this Rule is permitted to file a Motion to Review. Rule 90(e). If the Court deems that an answer is noncompliant, the Court may order an amended answer or a deemed admission. *Id.*

Pursuant to Rules 90(e) and 104, respondent moves for the Court to review the sufficiency of petitioners' responses to respondent's Third Request for Admissions. Respondent represents that they filed the Third Request for Admissions after informal discovery efforts failed. Respondent requests that the Court: (1) deem admitted respondent's request Nos. 38-39, 52, 70.d, 83, 89, 111, 114-115, 119-120, and 122-124, (2) deem admitted respondent's Request Nos. 76, 77, 102, and 108, and (3) disregard petitioners' general denial of the filing because the filing fails the specificity rule under Rule 90(c).

On June 5, 2023, petitioners filed their response to respondent's Third Request for Admissions, objecting to the admissions on multiple grounds. Petitioners represent that respondent has not adhered to the Tax Court Rules for discovery, as respondent did not attempt to discuss these requests informally prior to serving the Third Request for Admissions. On July 7, 2023, petitioners filed their response to

respondent's Motion to Review the Sufficiency of Answers, objecting to respondent's admissions as improper for reasons including multiple admissions, vague or ambiguous requests, undue burden, or lack of information.

Request Nos. 38 and 39 ask that petitioners admit that no property in DeKalb County, Georgia, was rezoned to R-60 during the years 2015 and 2016. Petitioners object to these requests as unduly burdensome. We agree with petitioners that these requests are unduly burdensome, and we will sustain petitioners' objections as to respondent's request Nos. 38 and 39.

Request No. 41 asks that petitioners admit that raw sewage was dumped into Snapfinger Creek in the time between when D&G purchased the property and contributed the easement. Request No. 42 asks that petitioners admit that Exhibit V contains a report, prepared by Georgia's Environmental Protection Division, disclosing the sewage spillover and overflow within ten miles of the property. Request No. 51 asks that petitioners admit to information about developments used as comparisons by Mr. Weibel in his appraisal as represented by the website, "The Wayback Machine." Petitioners object to all three requests as unduly burdensome, specifically as to the burden placed on petitioners to verify the accuracy of these sources. We agree with petitioners and will sustain petitioners' objections as to request Nos. 41, 42, and 52.

Request No. 70(d) provide an email from petitioner Davis to Mr. Weibel and ask that petitioners admit as to the meaning of "absorption" as referenced by petitioner Davis in the email. Petitioners object to this request as an impermissible admission with multiple requests and as unduly burdensome. In petitioners' Response to Motion to Review Sufficiency of Answers, petitioners clarified that the term "absorption" is a real estate term that commonly refers to the "absorption rate," which is a metric used to evaluate the rate at which available homes are sold in a specific market during a given time period. We agree with petitioners and will sustain petitioners' objections. Accordingly, we will deny the relief being sought as to request No. 70(d).

Request No. 83 asks that petitioners admit as to the contents of Exhibits R4 and AL. Petitioners object to this admission as factually inaccurate, as the second sentence of the admission refers to a different document and different matter. Accordingly, we will sustain petitioners' objections as to request No. 83.

Request Nos. 111, 114, 115, 119, and 120 are related to the process of submitting an appraisal to Georgia for the Georgia Conservation Tax Credit and the interactions between the Georgia Department of Natural Resources, Georgia State Properties Commission, and petitioners. We disagree with petitioners that all of these requests are unduly burdensome, vague, and ambiguous. Accordingly, petitioners shall amend their responses to request Nos. 111, 114, 115, and 119. However, we will sustain petitioners' objections as to request No. 120.

Request Nos. 122, 123, and 124 all relate to Mr. Weibel's appraisal. In request No. 122, respondent requested that petitioners admit or deny as authentic, markups of Mr. Weibel's appraisal. In request No. 123, respondent requested that petitioners admit or deny elements of Mr. Weibel's appraisal, such as the property was undeveloped land at the time of the appraisal and Mr. Weibel failed to allocate time to allow for rezoning, permitting, and construction. Petitioners objected to request Nos. 122 and 123 as seeking multiple admissions within the same request. In request No. 124, respondent seeks petitioners admit that the pages provided to respondent are the illegible copies of Mr. Weibel's appraisal originally attached to petitioners 2016 tax return. Accordingly, we overrule, in part, petitioners' objections and we will order petitioners to amend their responses as to request Nos. 122 and 124. We will sustain petitioners' objections as to request No. 123.

Respondent seeks request Nos. 76, 77, 102, and 108 be deemed admitted as petitioners previously denied these admissions for lack of information but failed to specify the steps taken to obtain the information. Petitioners, in their response to Motion to Review the Sufficiency of Answers, provided further support for their denials for lack of information. Accordingly, respondent's relief sought as to request Nos. 76, 77, 102, and 108 are denied.

Respondent seeks relief as to request No. 89 as deemed admitted. Petitioners object to the request as vague and argue that respondent failed to provide additional reasoning demonstrating why petitioners' previous response was deficient. We disagree with petitioners that the request is vague, and accordingly, we will order petitioners to amend their response to request No. 89.

Considering the foregoing, it is

ORDERED that respondent's Motion to Compel Production of Documents, filed June 8, 2023, is granted. Petitioners shall serve supplemental or amended answers on or before September 11, 2023. It is further

ORDERED that respondent's Motion to Compel Responses to Interrogatories, filed June 8, 2023, is granted. Petitioners shall serve supplemental or amended answers on or before September 11, 2023. It is further

ORDERED that respondent's Motion to Review the Sufficiency of Answers, filed June 8, 2023, is granted, in part. Petitioners shall supplement their responses to respondents Third Request for Admissions. Petitioners shall serve amended answers to request Nos. 111, 114, 115, 119, 122, 124, and 89 on or before September 11, 2023. It is further

ORDERED that respondent's Motion to Review the Sufficiency of Answers is denied as to request Nos. 38, 39, 41, 42, 52, 70(d), 83, 120, 123, 76, 77, 102, and 108.

(Signed) Christian N. Weiler
Judge