



United States Tax Court

Washington, DC 20217

FBA ST. CLAIR PROPERTY C, LLC,
JEFFREY L. SMITH, PARTNERSHIP
REPRESENTATIVE,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 14406-23.

ORDER

This case is calendared for trial during the Special Trial Session of the Court scheduled to commence on September 15, 2025, in Atlanta, Georgia.

On August 1, 2025, the Commissioner of Internal Revenue (the Commissioner) filed with the Court a Motion to Review the Sufficiency of Answers or Objections to Second Request for Admissions (Index No. 92). On August 1, 2025, the Commissioner filed with the Court a Motion to Compel Responses to Interrogatories (Index No. 93).

The Commissioner's Motion to Review Answers and Objections

Rule 90¹ permits a party to serve upon another party written requests for admission of the truth of any nonprivileged matter relevant to the pending action, so long as the matter is "set forth in the request and relate[s] to statements or opinions of fact or of the application of law to fact" Upon being served with written requests for admission, the answering party must: (1) specifically admit or deny the matter; (2) state in detail why the matter cannot be truthfully admitted or denied; or (3) state a detailed objection. *See* Rule 90(c). Under Rule 104(d), an evasive or incomplete answer to a Rule 90 request for admission is treated as a failure to respond.

A party who has requested admissions may move for a determination as to the

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

Served 09/02/25

sufficiency of any answers or objections. *See* Rule 90(e). In that case, absent a justified objection, the Court “shall order that an answer be served.” *Id.* Should the Court determine that any answer does not comply with the requirements of Rule 90, we have discretion either to order an amended answer or order that the matter is admitted. *Id.*

Consistent with our discovery rules, informal consultation between the parties is required before turning to this mechanism. Specifically, “the Court expects the parties to attempt to attain the objectives of such a request through informal consultation or communication before utilizing the procedures provided in this Rule.” Rule 90(a).

Here the Commissioner filed at Index No. 47 a Second Request for Admissions and St. Clair C filed its response at Index No. 68. The Commissioner’s asserts that St. Clair C’s answers and objections to certain of the requested admissions in the Second Request for Admissions are improper or incomplete and asks in his Motion at Index No. 92 for us to order proper answers. The requests for admissions (RFAs) at issue are as follows:

RFA 1, which concerns Mr. Jeffrey L. Smith’s involvement in other conservation easement cases.

RFA 2, which concerns Mr. Fiorella’s involvement in other conservation easement cases.

RFA 5, which concerns Mr. Jeffrey L. Smith’s and Mr. Fiorella’s sale of membership interests in other conservation easement transactions.

RFA 6, which concerns Mr. Jeffrey L. Smith’s and Mr. Fiorella’s distribution of private placement memoranda in other conservation easement transactions.

RFA 28, which concerns verifying the capital account maintenance requirements in certain provisions of St. Clair A’s limited liability company agreement.

RFA 29, which concerns verifying the capital account maintenance requirements in certain provisions of St. Clair C’s limited liability company agreement.

The Commissioner has established that he sought almost all of the information in the requests for admissions through informal mechanisms, including informal discovery requests and the stipulation process. As we further explain below, St. Clair C’s answers are either incomplete (RFAs 1, 5, and 6) or equivalent to nonanswers (RFAs 2).

First and foremost, St. Clair C’s blanket claims of nonrelevance and protection under section 6103 are unavailing. The matters are relevant, pertaining to penalty issues (RFAs 1, 2, 5, and 6) and the value of the subject property (RFAs 28 and 29).

Secondly, as to the objections that the RFAs “seek disclosure of taxpayer information in violation of I.R.C. § 6103,” we note that section 6103 broadly defines “return information,” but is not so all-encompassing as to include, e.g., the identification of other conservation easement transactions conducted by a given person, without more. Importantly, Congress created section 6103 in order to protect sensitive taxpayer return information held by the government from being improperly disclosed to third parties. As such, it prohibits the government (generally the Commissioner) from disclosing such return information and prohibits other persons with access to the sensitive return information received from the government or a finite list of other organizations (including corporations) from improperly disclosing that information to third parties. It has no bearing on private parties such as St. Clair C with independent access to that information.²

Lastly, the fact that Mr. Fiorella is deceased does not mean that St. Clair C does not have, or cannot obtain, responsive information to RFA 2 about his involvement in other conservation easement transactions. Accordingly, the Commissioner is entitled to a more direct answer to his requests.

As to RFAs 28 and 29, the limited liability company agreements themselves are adequate to underscore their capital account requirements and St. Clair C’s answers are adequate.

The Commissioner’s Motion to Compel Responses to Interrogatories

Rule 70(b)(1) permits discovery concerning “any matter not privileged that is relevant to the subject matter involved in the pending case.” 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 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.*

Finally, discovery requests that are not limited as to scope or time are disfavored. *See Rosenfeld*, 82 T.C. at 120 (1984) *citing Mallinckrodt Chemical Works v. Goldman, Sachs & Co.*, 58 F.R.D. 348, 353 (S.D. N.Y. 1973).

² See legislative history of I.R.C. § 6103 discussed in *Baskin v. U.S.*, 135 F.3d 338, 340-41 (1998).

In interrogatories 1 and 2, the Commissioner seeks all other instances in which Mr. Jeffrey L. Smith has invested in, promoted, or organized other conservation easement transactions and the fees he received in promoting, organizing or managing such transactions.

In interrogatories 3 and 4, the Commissioner seeks all other instances in which Mr. Fiorella invested in, promoted, or organized other conservation easement transactions and the fees he received in promoting, organizing or managing such transactions.

In interrogatory 9, the Commissioner seeks to uncover each of the appraisers who contributed to the valuation of the subject property and argues that St. Clair C's response ignores other appraisals and advisors consulted with regard to the transactions leading to the donation at issue here.

In interrogatory 12, the Commissioner seeks St. Clair C's opinion on the meaning of Treas. Reg. § 1.704-1(b)(2)(iv)(a)–(d).

In interrogatories 13 and 14, the Commissioner seeks St. Clair C's opinion on the application of section 704 to FBA's contribution to St. Clair A and St. Clair A's contribution to St. Clair C, respectively.

In interrogatories 15 and 16, the Commissioner seeks St. Clair C's opinion on the application of St. Clair A's limited liability company agreement to FBA's contribution to St. Clair A, and of St. Clair C' limited liability company agreement to St. Clair A's contribution to St. Clair C.

Analysis of The Commissioner's Objections

As to interrogatories 1–4, the Commissioner's requests are overly broad and not limited in scope or time and we will not grant the Commissioner's Motion to Compel Responses as to these interrogatories.

As to interrogatory 9, St. Clair C's answer appears incomplete and we will order St. Clair C to clarify whether other individuals or their appraisals were consulted in the valuation of Property C and, if so, to provide requested names and contact information.

As to interrogatory 12, the Commissioner seeks a pure opinion of law. As this interrogatory does not involve the application of the law to St. Clair C's facts, we will accordingly deny the Commissioner's Motion to Compel Responses as to interrogatory 12.

As to interrogatories 13–16, St. Clair C states that informal discovery did not occur prior to the interrogatory requests in violation of our Rules 70(a) and 90(a). St. Clair C further makes assertions of irrelevance, overbreadth, and in certain instances that the interrogatories call for mental impressions and legal theories held by St. Clair C's attorneys. St. Clair C states that the Code provisions "speak for themselves"

and points back to the wording in the limited liability company agreements suggesting they stand for what they say. As to St. Clair C's first point, the interrogatories sent prior to this Motion to Compel Responses were "informal discovery" in accordance with our Rules. As to the mental impressions and legal theories points, St. Clair C's answers did not properly invoke any privilege claims. As to the remaining points, the interrogatories appear to be relevant run-of-the-mill discovery requests to understand St. Clair C's current factual and legal positions that should be responded to in a direct and straightforward manner. Thus, we will require more direct responses to interrogatories 13–16 providing clarification as to St. Clair C's application of law to its facts as permitted in the discovery context. Because St. Clair C's responses do not fully answer the Commissioner's interrogatories as required by Rule 70(b), we will grant the Commissioner's Motion to Compel with respect to interrogatories 13–16.

To reflect the foregoing, it is

ORDERED that the Commissioner's Motion to Review the Sufficiency of Answers or Objections to Second Request for Admissions, filed August 1, 2025, is granted in part that, on or before **September 8, 2025**, St. Clair C shall serve answers or amended objections to RFAs 1, 2, 5, 6, and denied in part as to RFAs 28 and 29. It is further

ORDERED that the Commissioner's Motion to Compel Responses to Interrogatories, filed August 1, 2025, is granted in part in that, on or before **September 8, 2025**, St. Clair C shall supplement its responses to interrogatories 9 and 13–16 and denied in part as to interrogatories 1–4 and 12.

(Signed) Elizabeth A. Copeland
Judge