



United States Tax Court

Washington, DC 20217

MATTHEW M. HUTCHINGS & SHARI
L. HUTCHINGS,

Petitioners

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 13321-20.

ORDER

Pending before the Court are the Hutchings' Motion to Withdraw or Modify Deemed Admitted Admissions Pursuant to 90(f) and the Commissioner's Motion for Summary Judgment. The Commissioner's motion relies on the deemed admissions that are the subject of the Hutchings' motion. In support of their motion, the Hutchings provide facts that tend to refute some of the deemed admissions, and they provide information indicating that they disputed some of those deemed admissions.

Rule 90(f)¹ permits the Court to withdraw or modify deemed admissions on motion if the party filing the motion shows that granting it would promote trying the case on its merits. A party who files a motion to withdraw or modify admissions must indicate facts that tend to refute the deemed admissions. Allowing the Hutchings to modify or withdraw some of their deemed admissions will promote the parties trying the case on the merits. Therefore we grant modification or withdrawal for only those admissions against which the Hutchings have offered facts tending to dispute them. For all others, we deny their motion. To minimize any prejudice to the parties, we will also extend the deadline to submit to the Court any proposed trial exhibits.

Granting the Hutchings' motion brings material facts back into genuine dispute. A motion for summary judgment may be granted when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Since we granted the Hutchings' motion in part, we will deny the Commissioner's Motion for Summary Judgment.

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.

Served 01/02/24

Background

The Hutchings claimed deductions on their 2017 joint tax return related to Happy Eating Nutritional Consulting Wellness Camp (Happy Eating). Specifically, they reported car and truck expenses as well as ‘other expenses’ on their Schedule C, among other items. The Commissioner selected their 2017 joint tax return for audit. In a letter notifying the Hutchings of the audit, the Commissioner requested additional information to support claiming car and truck expenses as well as other expenses on their return.

After the Commissioner concluded his audit, he issued a notice of deficiency to the Hutchings dated September 14, 2020. The petitioners filed a timely petition on November 16, 2020, from Denver, Colorado. In their petition, the Hutchings asserted that the Commissioner erred in disallowing the car and truck expenses as well as the other expenses.

The Commissioner filed a First Request for Admissions, to which the Hutchings did not respond. A year later the Commissioner filed a Motion for Summary Judgment, to which the Hutchings responded. In their response, the Hutchings disputed some of the deemed admissions and also the process by which they came about. Although the Hutchings did not formally respond to the requested admissions, they attached correspondence to their motion that indicated that they disputed the substance of some of those admissions throughout this case. The Court held a conference call with the parties to discuss the case and ordered the Hutchings to file a motion to withdraw or modify deemed admissions pursuant to Rule 90(f).

The Hutchings subsequently filed the appropriate motion. In their motion, the Hutchings admitted some matters and denied or qualified others. Some denials or qualifications were supported with facts that tend to refute the admissions. Others were not.

Discussion

I. The Hutchings’ Motion to Withdraw or Modify Deemed Admissions

Rule 90 of the Tax Court Rule of Practice and Procedure permit parties to “serve on any party a written request to admit [. . .] the truth of any matters within the scope of” discovery, as determined under Rule 70(b)(1). Rule 90(a). “A request must separately set forth each matter of which an admission is requested and must advise the party to whom the request is directed of the consequences of failing to respond.” Rule 90(b). “Each matter is deemed admitted unless, within 30 days after service of the request” the party upon whom the request is served serves the requesting party with “a written answer specifically admitting or denying the matter, or asserting that it cannot be truthfully admitted or denied and setting forth” reasons as to why. Rule 90(c)(1). Alternatively, the party upon whom the request is served may object to the specific request with detailed reasons for their objection. Rule 90(c)(2). Responses must be signed by the party or the party’s counsel, and must be

filed with the Court with proof of service on the other party attached. *Id.* (flush language).

A denial must meet the substance of the requested admission, and if good faith requires that a party qualify an answer or deny only a part of a matter, that party must specify so much of it as is true and deny or qualify the remainder. *Id.* An answering party cannot cite lack of information or knowledge for failure to admit or deny unless the party states that the party has made a reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. *Id.* If a party considered a requested admission to constitute a genuine issue of material fact for trial, they may not object on that ground alone. *Id.* Rather, they must deny the admission and set forth reasons why the party cannot admit or deny it. *Id.* Objections on the grounds of relevance will be noted but may not be regarded as just cause for refusal to admit or deny. *Id.*

Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Rule 90(f). Withdrawal or modification may be permitted if the presentation of the merits of the case will be promoted thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice that party in prosecuting the case or defending on the merits. *Id.*

We have previously stated in *Boso v. Commissioner*, T.C. Memo. 1995-228, 69 T.C.M. (CCH) 2711, 2713 (1995), that a party denying admissions must set forth facts to refute the deemed admissions. A party filing a 90(f) motion is “not required to ‘try’ his case in the moving papers,” however, he needs to show more than a purpose to delay. *Id.*, citing *New v. Commissioner*, 92 T.C. 1146, 1149 (1989). Instead, he must show facts or proposed evidence contrary to or inconsistent with the deemed admissions. *Id.*

Parties must meet to confer before we may consider a Request for Admissions. *Branerton* procedures, which require parties to meet to discuss, deliberate, and exchange ideas, apply to admissions under Rule 90. See *Boso*, 69 T.C.M. (CCH) at 2712; citing *Odend’hal v. Commissioner*, 75 T.C. 400, 404 (1980). If parties fail to meet, the party upon whom a request is served may object to it as premature. *Boso*, 69 T.C.M. (CCH) at 2712. But the responding party is still required to file that objection within 30 days after service of the request for admissions. *Id.* Matters will be deemed admitted if the party fails to object, even if the original request for admissions is premature.

As a preliminary matter, the admissions contained within the Commissioner’s Request for Admissions are deemed admitted because the petitioner did not file a response with the Court within thirty days of filing. The Hutchings allege in their response to the Commissioner’s motion for summary judgment that they never had a *Branerton* conference before the Commissioner served the request for admissions. The Hutchings also allege that they objected to the request directly to the Commissioner over the telephone and email. But an objection to a request for

admissions as premature must be timely filed with the Court. Telephone and email communications are not enough. Therefore, the matters are deemed admitted because the Hutchings failed to object in a timely manner.

The Hutchings now seek to withdraw or qualify some of their deemed admissions. We will address the nature of the Hutchings' response.

The Hutchings admit requests 1, 3, 12, and 16, and they are admitted.

The Hutchings deny request 5, however they provide nothing in support of their bare denial. They remain deemed admitted.

Similarly, the Hutchings deny request 6 and they provide nothing in support of their bare denial in their response. However, taken as a whole, the Hutchings pleadings, the correspondence attached to their pleadings, and their motion make clear that they have continually disputed the substance of request 6. We relieve the Hutchings of deemed admissions 6.

For several requests, the Hutchings admit in part but seek to withdraw or modify the request. But their modification or withdrawal is not directed at the substance of the request, and typically offers additional information without actually disputing the substance of the request. The following requests fall into this category and remain deemed admitted: 2, 4, 7, 8, 9, 10, 13, 15, 17, 18, and 19.

To the extent the Hutchings have offered facts directed at the substance of an admission and which tend to refute the admission, we will grant their request to withdraw or modify the admissions. Accordingly, deemed admission 11 is modified as follows (by adding the underlined word): "Petitioners claim some business records for Happy Eating Nutritional Consulting Wellness Camp were lost, stolen, or do not exist." We also relieve the Hutchings of deemed admissions 14 and 20 because they offered facts that tended to refute the substance of the admission.

Request 6 presents a closer call. The Hutchings deny request 6, but they provide nothing in support of their bare denial in their response. However, reviewing the record as a whole, the Hutchings pleadings, the correspondence attached to their pleadings, and their motion make clear that they have continually disputed the substance of request 6. We relieve the Hutchings of deemed admission 6.

II. *Summary Judgment*

We may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); *Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992). The moving party bears the burden of showing that there is no genuine dispute as to any material fact. *Sundstrand Corp.*, 98 T.C. at 520. When a motion for summary judgment is properly made and supported, an opposing party may not rest on mere allegations or denials. Rule 121(d). Rather, the party's response, by affidavits or declarations, or as otherwise provided in Rule 121, must set forth specific facts showing there is a

genuine factual dispute for trial. Rule 121(d). In deciding whether to grant summary judgment, we view the facts and make inferences in the light most favorable to the nonmoving party. *Sundstrand Corp.*, 98 T.C. at 520.

III. *Commissioner's Motion for Summary Judgment*

The Commissioner asserts in his notice of deficiency that certain expenses were disallowed for failure to respond to requests for supporting information. In general, the Commissioner's determinations in a notice of deficiency are presumed correct, and the taxpayer bears the burden of proving otherwise. Rule 142(a). The Commissioner asserts the Hutchings provided no substantiation that they were entitled to business deductions under I.R.C. § 162, but the Hutchings have provided records disputing this contention. To the extent there is a dispute as to whether records exist to substantiate the deductions claimed, a dispute as to a material fact exists, thereby precluding summary judgment. Rule 121(a)(2).

Conclusion

To the extent the Hutchings provide facts that tend to dispute the Commissioner's requested admissions, we grant their motion to withdraw or modify admissions pursuant to Rule 90(f). Thus, admissions 11, 14, and 20 are withdrawn or modified as set forth above. All others continue to be deemed admitted. Granting the Hutchings' motion in part places material facts in dispute, thus we deny the Commissioner's motion for summary judgment. Given due consideration of the foregoing, it is

ORDERED that the Hutchings' motion to modify or withdraw admissions pursuant to rule 90(f) is granted in part, in that the admission made by the Hutchings is modified as follows:

"Admission no. 11. Petitioners claim some business records for Happy Eating Nutritional Consulting Wellness Camp were lost, stolen, or do not exist."

It is further

ORDERED that admissions 6, 14, and 20 are deemed withdrawn and are set aside. It is further

ORDERED that the Hutchings' motion to modify or withdraw admissions pursuant to rule 90(f) is denied in all other respects. It is further

ORDERED that the Commissioner's motion for summary judgment is denied. It is further

ORDERED that the deadline by which to submit proposed trial exhibits is extended to January 5, 2024.

(Signed) Ronald L. Buch
Judge