



United States Tax Court

Washington, DC 20217

ERIC MAURICE PINCKNEY,

Petitioner

v.

Docket No. 5050-19

Commissioner of Internal Revenue,

Respondent

ORDER

On December 29, 2020, respondent served petitioner a first request for admissions.

On March, 2, 2021, petitioner filed his answers and objections to the first request for admissions.

Rule 90(c)¹ sets forth what a party must do to respond to requests for admissions. According to that rule, a response must be either in the form of an objection or an answer. As to responses in the form of an answer, the rule requires a “written answer” (1) “specifically admitting or denying the matter involved in whole or in part,” or (2) “asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so.” Rule 90(c). The rule further provides: “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.” Rule 90(c). The rule further provides: “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(c).

¹All Rule references are to the Tax Court Rules of Practice and Procedure.

Rule 90(e) provides that the party who has requested the admissions may move to determine the sufficiency of the answers or objections. The rule further provides that if the Court determines that an answer does not comply with the requirements of Rule 90, then the Court may order either that (1) the matter is admitted or (2) that an amended answer be served.

On March 23, 2021, respondent filed a motion to review the sufficiency of answers or objections to request for admissions. Respondent only sought review with respect to certain requests.

Request 12

Request 12 of respondent's December 29, 2020 first request for admissions stated: "You operated Daitech Tax as a Schedule C sole proprietorship until 2011 when Daitech Tax became an S-Corporation."

Petitioner answered: "Admitted and denied in part based upon the documents filed with the IRS." Petitioner's answer does not comply with Rule 90(c), which requires that petitioner specify what part of the statement petitioner admits and what part of the statement petitioner denies.

Request 13

Request 13 stated: "You reported earnings from Daitech Tax on a Schedule C for the years at issue."

Petitioner answered: "Admitted in part and denied in part based upon amended returns on file with the IRS."

Respondent contends that petitioner's answer does not satisfy Rule 90(c) because it does not specify what part of the statement petitioner admits and what part of the statement petitioner denies. Respondent also contends that petitioner is wrong to rely on amended returns to formulate the answer to this request because this and other requests for admission requests information about the initial returns. We disagree with respondent's point about the amended returns. Other requests for information specifically referred to original returns. For example, request 16 stated: "On your original, individual Federal income tax return for the taxable year 2008, you reported, via Schedule C, \$35,386.00 of net profit from Daitech Tax." (Emphasis in the original). Therefore, it was reasonable for petitioner to interpret Request 13, which was not limited to original returns, to request information about both the original returns and the amended returns. However, petitioner's answer

does not comply with Rule 90(c). If petitioner intended to admit that the statement is true with respect to the original returns, but not the amended returns, or if petitioner intended to admit that the statement is true with respect to the amended returns, but not the original returns, petitioner should have said so.

Request 14

Request 14 stated: “Your individual Federal income tax returns filed for taxable years 2008 and 2009 included Forms Schedule C reporting income and expenses from Daitech Tax.”

Petitioner answered: “Admitted in part and denied in part based upon amended returns on file with the IRS.”

Respondent contends that petitioner’s answer does not satisfy Rule 90(c) because it does not specify what part of the statement petitioner admits and what part of the statement petitioner denies. We agree. Respondent also contends that petitioner is wrong to rely on amended returns to formulate the answer to this request because this and other requests for admission requests information about the initial returns. We disagree with respondent’s point about the amended returns. Therefore, it was reasonable for petitioner to interpret Request 14, which was not limited to original returns, to request information about both the original returns and the amended returns. However, petitioner’s answer does not comply with Rule 90(c). If petitioner intended to admit that the statement is true with respect to the original returns, but not the amended returns, or if petitioner intended to admit that the statement is true with respect to the amended returns, but not the original returns, petitioner should have said so.

Request 15

Request 15 stated: “Your taxable year 2008 Federal income tax return was filed on or about May 12, 2009.”

Petitioner answered: “Admitted in part and denied in part based upon amended returns on file with the IRS.”

Respondent contends that petitioner’s answer does not satisfy Rule 90(c) because it does not specify what part of the statement petitioner admits and what part of the statement petitioner denies. We agree. Respondent also contends that petitioner is wrong to rely on amended returns to formulate the answer to this request because this and other requests for admission requests information about

the initial returns. We disagree with respondent's point about the amended returns. Therefore, it was reasonable for petitioner to interpret Request 14, which was not limited to original returns, to request information about both the original returns and the amended returns. However, petitioner's answer does not comply with Rule 90(c). If petitioner intended to admit that the statement is true with respect to the original returns, but not the amended returns, or if petitioner intended to admit that the statement is true with respect to the amended returns, but not the original returns, petitioner should have said so.

Request 16

Request 16 stated: "On your original, individual Federal income tax return for the taxable year 2008, you reported, via Schedule C, \$35,860.00 of net profit from Daitech Tax." (Emphasis in the original).

Petitioner answered: "Admitted in part and denied in part based upon amended returns on file with the IRS." This request specifically asks for information regarding the original return, not the amended return. Therefore, it was improper for petitioner to deny this request in part based on his amended return.

Request 17

Request 17 stated: "This amount was a result of claiming \$200,500.00 in gross receipts, \$23,231.00 of Cost of Goods Sold, \$138,619.00 of total expenses, and \$3,264.00 for business use of home for Daitech Tax for the taxable year 2008."

Petitioner answered: "Admitted in part and denied in part based upon amended returns on file with the IRS." This request, which relates to request 16, specifically asks for information regarding the original return, not the amended return. Therefore, it was improper for petitioner to deny this request in part based on his amended return.

Request 18

Request 18 stated: "Your taxable year 2009 Federal income tax return was originally filed on or about September 24, 2010."

Petitioner answered: "Admitted in part and denied in part based upon amended returns on file with the IRS." This request specifically asks for information regarding the original return, not the amended return. Therefore, it

was improper for petitioner to deny this request in part based on his amended return.

Request 19

Request 19 stated: “On your original, individual Federal income tax return for the taxable year 2009, you reported, via Schedule C, \$52,211.00 of profit from Daitech Tax.” (Emphasis in original).

Petitioner answered: “Admitted in part and denied in part based upon amended returns on file with the IRS.” This request specifically asks for information regarding the original return, not the amended return. Therefore, it was improper for petitioner to deny this request in part based on his amended return.

Request 20

Request 20 stated: “This amount was a result of claiming \$5,530.00 in gross receipts, \$30,667.00 of Cost of Goods Sold, \$137,550.00 of other income, and \$60,202.00 of total expenses for Daitech Tax for the taxable year 2009.”

Petitioner answered: “Admitted in part and denied in part based upon amended returns on file with the IRS.” This request, which relates to request 19, specifically asks for information regarding the original return, not the amended return. Therefore, it was inappropriate for petitioner to deny this request in part based on his amended return.

Request 21

Request 21 stated: “The adjustments at issue in this case are based on the original individual income tax returns you filed for the taxable years 2008 and 2009 filed on May 12, 2009 and September 24, 2010, respectively.”

Petitioner answered: “Admitted in part and denied in part based upon amended returns on file with the IRS.” This request specifically asks for information regarding the original return, not the amended return. Therefore, it was inappropriate for petitioner to deny this request in part based on his amended return.

Request 28

Request 28 stated: “You co-conspired along with Brown and Samuel to defraud the United States in violation of 18 U.S.C. § 371, an offense to which you pleaded guilty.”

Petitioner answered: “Admitted in part and denied in part based upon planned and future litigation based upon statutory rights, actual innocence, and other affirmative defenses.” Petitioner’s answer does not comply with Rule 90(c), which requires that petitioner specify what part of the statement petitioner admits and what part of the statement petitioner denies.

Request 32

Request 32 stated: “Deposits into Daitech Tax’s business account ending in 6122 for the taxable year 2008 total \$572,882.61.”

Petitioner answered: “Admitted in part and denied in part as this Petitioner cannot verify exact calculations as the Government and the Internal Revenue Service are in exclusive possession of all bank and tax records in this and the related criminal matter.” This answer does not comply with Rule 90(c), which requires that petitioner specify what part of the statement petitioner admits and what part of the statement petitioner denies. Furthermore, it appears that respondent attached bank records to its request for admissions. Petitioner has not explained why these records are insufficient to enable him to admit or deny this request.

Request 34

Request 34 stated: “Deposits into Daitech Tax’s business account ending in 6122 for the taxable year 2009 total \$477,590.86.”

Petitioner answered: “Admitted in part and denied in part as this Petitioner cannot verify exact calculations as the Government and the Internal Revenue Service are in exclusive possession of all bank and tax records in this and the related criminal matter.” This answer does not comply with Rule 90(c), which requires that petitioner specify what part of the statement petitioner admits and what part of the statement petitioner denies. Furthermore, it appears that respondent attached bank records to its request for admission. Petitioner has not explained why these records are insufficient to enable him to admit or deny this request.

Request 41

Request 41 stated: “Via judgment filed December 2, 2016, you pleaded guilty to Count I of the Superseding Indictment, pleading guilty to conspiring to defraud the United States pursuant to 18 U.S.C. § 371 for the tax years 2008 to 2011.”

Petitioner answered: “Admitted in part and denied in part on the basis of planned litigation on the basis of actual innocence.” This answer does not comply with Rule 90(c), which requires that petitioner specify what part of the statement petitioner admits and what part of the statement petitioner denies.

Conclusion

Given the foregoing, it is

ORDERED that respondent’s March 23, 2021 motion to review the sufficiency of answers or objections to request for admissions is granted and petitioner shall, on or before June 14, 2021, file amended answers to respondent’s request for admissions numbers 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 32, 34, and 41.

**(Signed) Richard T. Morrison
Judge**