



United States Tax Court

Washington, DC 20217

SKYLAB SERIES OF FORTRESS
INSURANCE, LLC, ET AL.,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket Nos. 25669-16, 25670-16,
25671-16, 25672-16, 22292-17,
22293-17, 22294-17, 22295-17,
19183-18, 19184-18, 19185-18,
19186-18, 19535-19, 19536-19,
21965-19, 21966-19, 13152-20,
13153-20, 13154-20, 13155-20,
31590-21, 31591-21, 31593-21,
25718-22, 25720-22

ORDER

These consolidated cases are currently set for trial at the special session of the Court scheduled to commence on February 10, 2025, in Phoenix, Arizona. Pending before us are the petitioners' Motion to Review the Sufficiency of Answers or Objections to Request of Admissions and Motion to Compel Responses to Interrogatories. The underlying issue in these cases involve a micro-captive insurance arrangement, and the petitioners' Motions principally seek information relating to the Commissioner's characterization of the type of income received by petitioners.

Court discovery rules require complete answers or explanations why the responding party cannot provide an answer. The Commissioner sufficiently provided responses to all request for admissions and to most of the interrogatories. Accordingly, as discussed below, we will deny the petitioners' Motion to Review the Sufficiency of Answers and grant in part petitioners' Motion to Compel Interrogatories.

Background

As required by Rule 70(a)(1) and *Branerton Corp. v. Commissioner*, 61 T.C. 691 (1974), the parties began discovery by engaging in informal discovery requests in late 2023.¹ The Court ordered pretrial scheduling deadlines on October 12, 2023.

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 09/27/24

Petitioners served the Commissioner with an informal discovery request on May 14, 2024. This informal request contained a list of requested documents, questions to be answered, and requests for admissions. The Commissioner responded to the request on June 5, 2024, providing some documents and informing petitioners that additional documents would be provided on a rolling basis. The Commissioner also requested search terms for electronically stored information.

On June 14, 2024, pursuant to Rule 90, petitioners served on the Commissioner a First Request for Admissions consisting of 54 numbered admissions. On that same date, petitioners served on the Commissioner, pursuant to Rule 71, a First Request for Interrogatories.

On July 15, 2024, the Commissioner responded to the Request for Admissions. He admitted as to some requests, denied others, and neither admitted nor denied many due to a lack of information. On that same date, the Commissioner responded to petitioners' First Request for Interrogatories. On July 31, 2024, the Commissioner provided a second response to petitioners' First Request for Interrogatories.

Petitioners filed two discovery motions on August 2, 2024, specifically a Motion to Review the Sufficiency of Answers to Requests for Admissions pursuant to Rule 90(e) and a Motion to Compel Responses to Interrogatories pursuant to Rules 71(c) and 104(b). On August 21, 2024, the Commissioner filed responses to petitioners' motions requesting denial of both. On September 25, 2024, the Court held a hearing on an unrelated matter during which the Court discussed petitioners' Motions with the parties.

Discussion

A party generally may obtain discovery of documents or information that is not privileged and is relevant to the subject matter of the case. Rule 70(a)(1) and (b); Rule 72(a). "The Court applies the standard of relevancy liberally when it comes to matters of discovery, and a party challenging a request for the production of documents has the burden of establishing that the requested documents are not discoverable." *Dynamo Holdings Ltd. P'ship v. Commissioner*, 143 T.C. 183, 189 (2014).

I. Motion to Review the Sufficiency of the Response to Request for Admissions

Rule 90 of the Tax Court Rule of Practice and Procedure permits 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). Rule 90(e) grants us the authority to review the sufficiency of answers or objections, on motion of the requesting party. If we find a response insufficient we may order the matter admitted or allow the responding party to file an amended answer. Rule 90(e).

Petitioners served the Commissioner with a Request for Admissions on June 14, 2024. The Commissioner's response dated July 15, 2024 denied requests 1, 14 through 25, 28, and 41 through 52 and neither admitted nor denied requests 2 through 13 and 29 through 40. The Commissioner admitted requests 26, 27, 53 and 54. Petitioners' requests are "seeking clarification on what type of income under I.R.C. § 61" the Commissioner is proposing petitioners received. Petitioners' Motion to Review the Sufficiency of Answers states that the Commissioner's responses to the Request for Admissions are insufficient and requests the items be deemed admitted or for the Commissioner to provide amended responses.

Several of the requests are similar in nature with only minor differences such as relating to different entities or identifying different types of gross income. For purposes of addressing the motion, we will address similar requests together.

The Commissioner admits requests 26, 27, 53 and 54, and we need not address them further.

Requests 1 and 28 ask the Commissioner to admit that Skylab Series, Inc. (Skylab) or Maverick Series, Inc. (Maverick) ² "did not receive *any* other income under I.R.C. § 61" that was not reported on their Form 1120-PC for the taxable periods of 2012–2016. The Commissioner denied requests 1 and 28 in his response and provided an explanation why.

Under Rule 90(c), a denial "shall fairly meet the substance of the requested admission." Requests 2 and 29 ask if Skylab and Maverick did not receive *any* gross income not reported on its Form 1120-PC. The Commissioner denies these requests, stating Skylab and Maverick reported gross written premiums and has not established that such amounts are not includible in gross income under section 61. The Commissioner has adequately explained his reasons for denying requests 1 and 28 which meet the substance of the requested admission, and we deem these responses sufficient.

Requests 2 through 13 and 29 through 40 ask the Commissioner to admit that Skylab and Maverick did not receive any specific types of gross income listed under section 61(a). The Commissioner neither denied nor admitted requests 2 through 13 and 29 through 40 (which has the practical effect of a denial). The Commissioner states he has made reasonable inquiry, but the information provided is insufficient to enable an admission or denial. The Commissioner further states discovery requests

² Skylab Series, Inc. was formerly known as Skylab Series of Fortress Insurance, LLC and Maverick Series, Inc. was formerly known as Maverick Series of Fortress Insurance, LLC.

for accounting workpapers have not been fulfilled.

Under Rule 90(c), a party may deny or admit a request if an explanation is provided. The Commissioner has adequately explained his reasons for refusing to admit or deny these requests as the petitioners had not provided requested accounting papers. The Commissioner's responses are sufficient.

Requests 14 through 25 and 41 through 52 ask the Commissioner to admit that in neither the notice of deficiency nor the Answer did the Commissioner propose Skylab and Maverick received specific types of gross income under section 61(a). The Commissioner objected to these requests as a "compound request involving multiple matters that fail to separately set forth each matter as required by Rule 90(b)" and for the use of vague and ambiguous terms. The Commissioner additionally stated that Skylab and Maverick bear the burden of characterizing the amounts received. The Commissioner reiterates that the accounting workpapers requested from petitioners have not been provided to the Commissioner. The Commissioner has adequately explained his reasons for refusing to admit or deny these requests, and we deem these responses sufficient.

II. *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.* Where an answer to an interrogatory may be derived from an answering party's records and the burden to derive such answer is the same for the requesting and answering parties, "it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries." Rule 71(e).

Petitioners served the Commissioner with a First Request for Interrogatories on June 14, 2024. The interrogatories seek information related to income adjustments for the entities Maverick and Skylab as well as individuals Fernando and Javier Scalini. Most, but not all, of those requests sought additional information relating to any Request for Admission that was not fully admitted. On July 15, 2024, the Commissioner responded to petitioners' request and provided an additional response on July 31, 2024. In his first response, the Commissioner provided various general objections to the interrogatories and provided responses to each interrogatory.

It was unclear to both the Commissioner and the Court whether petitioners sought to compel responses to all interrogatories or only those that sought additional

information with respect to the Request for Admissions. In a hearing held on September 25, 2024, after some back-and-forth, petitioners clarified that they sought to compel responses to all of the interrogatories. Accordingly, we will review the Commissioner's responses to all 90 interrogatories.

A. *Interrogatories 1 and 2*

Interrogatories 1 and 2 seek information regarding expert witnesses. In the Commissioner's first response dated July 15, 2024, he objected on various grounds and stated the information would be provided when it became available. On July 31, 2024 the Commissioner provided a second response to the petitioners' First Interrogatories therein answering interrogatories 1 and 2 with the name and information of the Commissioner's expert witness. The Commissioner has provided a complete response to these interrogatories. We therefore deny the motion to compel as it relates to interrogatories 1 and 2.

B. *Interrogatories 3 and 4*

Interrogatories 3 and 4 seek information regarding witnesses the Commissioner intends to call at trial. In the Commissioner's response, he objected to the request based on work product privilege. He then stated that the information will be provided in his pre-trial memorandum. The Court set a deadline for pretrial memoranda, which contains a section for identifying witnesses intended to call for trial, on January 10, 2025. These requests accelerate the deadline set forth in the pretrial schedule. We therefore deny the motion to compel as it relates to interrogatories 3 and 4.

C. *Interrogatories 5 and 6*

Interrogatories 5 and 6 request third party names and the information the Commissioner requested documents from or contacted from audit until present. The Commissioner objected on multiple grounds but ultimately provided a third party name and a date of summons in his response. The Commissioner has provided a complete response to these interrogatories. We therefore deny the motion to compel as it relates to interrogatories 5 and 6.

D. *Interrogatories 7 through 61*

Interrogatories 7 through 61 ask for information relating to petitioners' request for admissions served on the Commissioner on June 14, 2024. The interrogatories seek information about each denial that may be made in response to the request for information. The Commissioner states his response was provided in his Response to Petitioners' First Request for Admissions.³ Petitioners' claim these responses are inadequate. As we previously discussed, the response to the request for admissions contained sufficient responses and therefore the Commissioner has

³ The Commissioner objected to interrogatory 38 as a duplicate of interrogatory 37.

provided a complete response to theses interrogatories. We therefore deny the motion to compel as it relates to interrogatories 7 through 61.

E. *Interrogatories 62, 63, 66, 70, 73, 77 through 81, and 84 through 88*

These interrogatories seek information on the Commissioner's legal and factual bases supporting his determinations in the notice of deficiencies issued to petitioners for tax years 2012 through 2016. The Commissioner's response stated their explanations are in the various Forms 886-A issued to petitioners.⁴ But the only Forms 886-A available for the Court to review are those attached to the notices of deficiency included with the petitions. Those Forms 886-A are conclusory and do not adequately respond to these interrogatories. We will grant the motion as to these interrogatories and order the Commissioner to supplement his response by either directing petitioners to specific documents and passages that provide the responsive information or by providing a direct, written response.

F. *Interrogatories 67 and 74*

Interrogatories 67 and 74 are duplicates of interrogatories 66 and 73. [56:119-120]. As these interrogatories are duplicates, we deny the motion with respect to interrogatories 67 and 74.

G. *Interrogatories 64, 65, 71 and 72*

Interrogatories 64, 65, 71, and 72 request information on Skylab and Maverick's business operations. Specifically, the requests ask what the Commissioner "believes" Skylab and Maverick's business operations and the goods and services the entities provided in the exchange for taxable premiums for the taxable years. The Commissioner responded to these interrogatories by stating he does not bear the burden of these determinations. We understand the Commissioner's response to mean that he is not taking a specific position on the type of business operations or goods and services received by Skylabs or Maverick. The Commissioner has provided a complete response to these interrogatories. We therefore deny the motion to compel as it relates to interrogatories 64, 65, 71 and 72.

H. *Interrogatories 68, 75, 82, and 89*

Interrogatories 68, 75, 82 and 89 request information on how the Commissioner complied with procedural requirements under section 6751 for all petitioners. The Commissioner's response directed petitioners to the information provided in response to petitioners' second request for production of documents dated June 14, 2024.

⁴ In the hearing held September 25, 2024, the Commissioner stated the Forms 886-A referred to in his response are the forms contained in the administrative file sent to petitioners. According to counsel for the Commissioner, these forms are different from the Forms 886-A attached to the notices of deficiency initially sent to the petitioners.

Under Rule 71(e), the producing party has the option of responding to interrogatories by producing or otherwise providing access to business records. The document the producing party is directing to must, however, contain a response. *See* Rule 71(e). The Commissioner's response directs petitioners to documents previously provided to petitioners in accordance with Rule 71(e). The Commissioner has provided a complete response to these interrogatories. We therefore deny the motion to compel as it relates to interrogatories 68, 75, 82, and 89.

I. *Interrogatories 69, 76, 83 and 90*

These interrogatories seek the names of persons who proposed the penalties on the notice of deficiencies given to petitioners for all taxable years. The Commissioner provided a list of individuals who determined the penalties for each taxable year for all petitioners. The Commissioner has provided a complete response to these interrogatories. We therefore will deny the motion to compel as it relates to interrogatories 69, 76, 83, and 90.

Conclusion

For the reasons set forth above, it is

ORDERED that petitioners' Motion to Review the Sufficiency of the Response to Request for Admissions, filed August 2, 2024, is denied. It is further

ORDERED that petitioners' Motion to Compel Responses to Interrogatories, filed August 2, 2024, is granted in part and denied in part as follows:

Petitioners' Motion to Compel Responses to Interrogatories is denied for interrogatories 1 through 61, 64, 65, 67 through 69, 71, 72, 74 through 76, 82, 83, 89, and 90.

Petitioners' Motion to Compel Responses to Interrogatories is granted for interrogatories 62, 63, 66, 70, 73, 77 through 81, and 84 through 88.

It is further,

ORDERED that the Commissioner shall supplement his discovery responses consistent with this Order, with responses to be delivered to petitioners by October 11, 2024.

(Signed) Ronald L. Buch
Judge