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UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

ADM.	
RECORDED	
SN	
SERVICE	
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CAL.	
STAT.	
S.T. JUDGE	
FILES	

GARY W. SWANSON *
Petitioner, *
V. * Docket No. 14032-06
COMMISSIONER OF INTERNAL REVENUE, *
Respondent. *

ORDER

This case is calendared for trial at the Session of the Court scheduled to commence on December 10, 2007, in Atlanta, Georgia.

On August 24, 2007, pursuant to Rule 90 of this Court's Rules of Practice and Procedure, petitioner served on respondent, and filed with this Court on August 27, 2007, a First Request for Admissions. On September 25, 2007, respondent filed a Response to Petitioner's First Request for Admission. On September 6, 2007, petitioner filed a Second Request for Admissions, having been served on respondent on August 31, 2007. On October 2, 2007, respondent filed his Response to Petitioner's Second Request for Admissions.

On October 9, 2007, petitioner filed a Motion For Review of Sufficiency of Respondent's Responses to Petitioner's First Request for Admission, accompanied by a Brief in Support thereof, requesting that the Court review the responses by respondent to petitioner's First Request for Admissions and deem petitioner's requests admitted. Respondent filed her response to petitioner's motion on November 9, 2007.

Respondent denies petitioner's requests for admissions 1, 2, 3, 4, 6, 8, 9, 12, 18, and 19 for lack of knowledge. Respondent did not, however, state that she had made a reasonable inquiry and that the information known by respondent or readily obtainable by respondent's counsel was insufficient to enable respondent to admit or deny. Tax Court Rule 90(c) states "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

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obtainable by such party is insufficient to enable such party to admit or deny." Accordingly, we find respondent's responses to requests for admissions 1, 2, 3, 4, 6, 8, 9, 12, 18, and 19 insufficient as filed.

Respondent objects to petitioner's requests for admissions 11, 13, 14, 15, 16, and 17 on the grounds they are not relevant to the issues before the Court. Petitioner submits that requests for admission 13 through 16 are relevant to who bears the burden of production and proof under section 7491. Without regard to the merits of the parties arguments on relevance, Rule 90(c) instructs that "an objection on the ground of relevance may be noted by any party but it is not regarded as just cause for refusal to admit or deny." We find respondent's responses to petitioner's requests for admissions 11, 13, 14, 15, 16, and 17 to be insufficient as filed.

Respondent has denied petitioner's requests for admission 5, 7, and 10. We find respondent's answers to requests for admission 5, 7, and 10 to be sufficient.

Given due consideration to the foregoing, and in reviewing petitioner's Motion, Brief in Support of, and respondent's Response thereto, it is hereby

ORDERED that, on or before November 30, 2007, and without waiving her relevancy objection, respondent shall amend her answers to petitioner's request for admissions in a manner consistent with Rule 90(c) and this Order. To the extent respondent now has knowledge sufficient to enable her to admit or deny the requested admissions, respondent shall amend her answers accordingly. If respondent continues to lack information to enable her to admit or deny the requested admissions, she shall state in detail the inquiries she has made to obtain that information. It is further,

ORDERED that in the event respondent fails to respond to the above-requested admissions set forth in petitioner's First Request for Admissions, the Court, pursuant to Rule 90(e), may deem those admissions in petitioner's First Request for Admissions admitted.


Joseph R. Goeke
Judge

DATED: Washington, D.C.
November 15, 2007