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In this article, Tyson uses the Tax Court's recent memorandum opinion in *Beveled Edge Insurance Co. Inc.* to examine trial preparation through requests for admission and compelled stipulations when efforts to consult informally with opposing counsel fail.

Beveled Edge Insurance Co. Inc. is the lead case of a group of microcaptive cases in Tax Court.[1] The litigation has been contentious.[2] Recently, the court (Judge James Halpern) reviewed the sufficiency of the commissioner's responses to requests for admission (RFAs). The commissioner objected to 120 of 128 RFAs. The court concluded that many of the objections were unjustified and ordered the commissioner to serve answers or revised responses. As for the eight RFAs that the commissioner neither objected to nor answered, the court deemed those admitted.[3]

In Tax Court, parties are required to communicate informally before serving RFAs or formal discovery. The parties are expected to develop a record of agreed facts through the stipulation process and identify unagreed facts.

Sometimes informal consultation and the stipulation process stop working. When it does, litigants can use RFAs under Rule 90 and motions to compel stipulations under Rule 91(f).[4] RFAs are especially good for authenticating documents and for narrow points that can be simply stated. Compelled stipulations are effective with larger volumes of content but are more time-consuming to prepare. Both can break logjams when informal communication breaks down, as they require a ruling by the presiding judge. Following *Beveled Edge*, this article focuses primarily on RFAs but mentions compelled stipulations because they should be in every tax litigator's toolbox.

I. Communicating Informally and Representing Clients Diligently

In Tax Court, the parties are required to discuss facts and exchange documents to facilitate the stipulation process.[5] Stipulations are a bedrock of Tax Court practice for "'narrowing areas of

[1] This article cites several orders of the Tax Court that, although helpful to understand how judges think, are not precedential. Rule 50(f).

[2] The filings so far in the consolidated cases reflect the lack of smooth sailing. The commissioner moved to compel documents (which the court denied), moved for a protective order (which the court granted), and moved to disqualify counsel (which the court denied). A prior attorney for the taxpayer (a former IRS attorney who had an alleged connection to the cases while he worked for the IRS) entered an appearance for the taxpayers, then withdrew shortly thereafter, along with another attorney. *See Beveled Edge Insurance Co. v. Commissioner*, Nos. 19821-16 et al. (Aug. 13, 2024). The taxpayers and a third party moved to quash a subpoena (granted by the court). *Id.* Also, preceding the Tax Court cases, the taxpayers and the Justice Department, on behalf of the IRS, litigated several disputes in federal district court over producing documents. *See* memorandum opinion and order, *United States v. Beveled Edge Insurance Co.*, No. 4:16-mc-000005 (W.D. Ky. Sept. 1, 2017); memorandum opinion and order, *Beveled Edge Insurance Co.*, No. 4:16-mc-000005 (W.D. Ky. July 7, 2017); memorandum opinion and order, *Micro Cap KY Insurance Co. Inc. v. United States*, No. 5:16-cv-00278 (E.D. Ky. Mar. 27, 2017).

[3] *Beveled Edge Insurance Co. v. Commissioner*, T.C. Memo. 2026-57.

[4] Litigants can also move under Rule 104 for enforcement of discovery.

[5] *Branerton Corp. v. Commissioner*, 61 T.C. 691, 691 (1974).

dispute, and offering an active medium for settlement.'"[6] The voluntary-exchange requirement contemplates the discussion, deliberation, and exchange of ideas, which applies to admissions under Rule 90 and stipulations under Rule 91.[7]

The duty to consult informally does not mean conceding disputed points of fact or law. Attorneys who practice before the Tax Court are governed by the Model Rules of Professional Conduct of the American Bar Association.[8] Under ABA Model Rule 1.3, attorneys have a duty to represent their clients diligently. Diligent representation does not mean that a lawyer must (or should) press for every advantage that might be realized; the attorney's job is to act with commitment and dedication to the client's interests.[9] If you have a meritorious objection, you have a duty to make it. If not, query the budget and boundaries for unnecessarily protracting litigation.[10]

II. RFAs Under Rule 90

In Tax Court, RFAs are governed by Rule 90. That rule, which was adopted in 1973, was adapted from Rule 36 of the Federal Rules of Civil Procedure.[11] Under Rule 90(c), a responding party must (1) specifically admit or deny the matter in whole or part, or (2) assert that the matter cannot be truthfully admitted or denied, and state in detail why not. Instead of admitting or denying the matter, a party can object "stating in detail the reasons therefor."[12]

As adopted, under Rule 90, RFAs:

> are principally a means of establishing matters which are not disputed, whether of fact or of application of law to fact, and are intended to avoid the time and effort needed to prove them at trial. Such requests may also aid the discovery efforts of a party, or they may assist in arriving at stipulations under Rule 91. In a larger context, therefore, such requests may promote the narrowing of issues and the settlement of cases. Their effective operation, however, requires a succinct and clear statement of the request, and an answer which is not evasive.[13]

Rule 90(a) requires a party to first seek an admission from the opposing party informally. RFAs may ask the opposing party to admit (1) that a fact is true, (2) that the party holds a certain opinion about a fact, (3) that a certain application of law to a certain factual situation is correct, or (4) that the party holds a certain opinion about the application of law to a certain factual situation.[14] "The point of admissions is to avoid wasting the fact finder's time with issues that the parties can resolve on their own."[15] Admissions serve "'the relatively limited purpose of eliminating the necessity of putting on formal proof of essentially uncontroverted facts, not as a substitute for trial.'"[16]

In *Beveled Edge*, the RFAs asked about substantive facts and authenticity.[17] In most cases, the authenticity of most documents is resolved informally. When it can't be, because of the

[6] *Id.* at 691 and n.1 (quoting the explanatory note to Rule 91 (60 T.C. 1118)).

[7] *Boso v. Commissioner*, T.C. Memo. 1995-228 at 6 (discussing *Odend'hal v. Commissioner*, 75 T.C. 400, 403-404 (1980)).

[8] Rule 201(a).

[9] *See* Model Rule 1.3 — Comment.

[10] Under section 6673, the court can impose sanctions against either a taxpayer or an attorney for multiplying the proceedings "unreasonably or vexatiously." The court has warned attorneys in recent cases about potential sanctions for maintaining arguments that may result in sanctions. *See Veribest Vesta LLC v. Commissioner*, No. 9158-23, at Tr. 59-61 (T.C. July 15, 2025) ("And we provide this warning, that continuing to pursue similarly incredible, nonsensical, and, quite frankly, smelly arguments may result in sanctions on petitioner or its counsel."); *Paul-Adams Quarry Trust LLC v. Commissioner*, No. 10145-21, at 9 (T.C. Jan. 9, 2026) ("We observe that pursuing meritless arguments may result in our imposing sanctions against petitioner pursuant to section 6673(a)(1) or against petitioner's counsel under section 6673(a)(2)."); *Cottonpatch Timber Co. LLC v. Commissioner*, No. 26103-22, at 2 (T.C. Oct. 29, 2025) ("Petitioner's counsel should be able, in due course, to explain why its position in this case is materially different from the strongly criticized positions in [other] cases, since a position that ignores those opinions and reflects the gross fallacies in those previous positions might be frivolous, see sec. 6673(a)(2), and trial time spent in disregard of those opinions would likely be a waste.").

[11] *See* 60 T.C. 1114 (1973).

[12] Rule 90(c)(2).

[13] Note to 1973 adoption of Rule 90, 60 T.C. 1114-1115 (1973).

[14] *Hersch v. Commissioner*, T.C. Memo. 1992-222 at *6.

[15] *Id.* at *9.

[16] *Pearsall v. Commissioner*, 62 T.C. 94, 95 (1974) (quoting James William Moore, *Moore's Federal Practice* (2d ed. 1974), at para. 36.04). As recognized in *Odend'hal*, 75 T.C. at 404, and *Boso*, T.C. Memo. 1995-228, the holding in *Pearsall* that informal consultation is not a prerequisite to issuing an RFA has been abrogated by changes to the rule.

[17] "Authenticity" refers to whether a document is what the proponent claims it is. Fed. R. Evid. 901(a).

narrow question involved, RFAs can be effective in establishing the genuineness of the document.[18]

III. Stipulations and Motions Under Rule 91(f) to Compel Stipulations

Stipulations are required.[19] Rule 91(a)(1) says that "the parties are required to stipulate to the fullest extent to which complete or qualified agreement can or fairly should be reached" about relevant, nonprivileged matters, "regardless of whether those matters involve fact or opinion or the application of law to fact."[20] A party can object to a proposed stipulation because it is immaterial or irrelevant, but neither objection is a basis for refusing to stipulate to the proposed stipulation.[21] Exhibits are included with and are considered part of the stipulations, and the statements therein can support findings of fact by the court, but the mere fact that the statement appears in an exhibit does not necessarily establish the statement's truth.[22]

If the stipulation process has become one-sided, anticipate filing a motion under Rule 91(f) to compel stipulations. It cannot be filed unless the case has been set for trial, and it must be filed at least 45 days before the call of the case from a trial calendar.[23] The motion requires identifying, in separately numbered paragraphs, each matter claimed for stipulation, the proposed language of each stipulation, the support for the proposed stipulation, and why the opponent had reasonable access to support for the stipulation.[24] Upon filing a motion, the court orders the other party to show cause within 20 days as to why the facts should not be deemed admitted.[25] Motions under Rule 91(f) target refusals to engage, not genuine disputes over facts.

IV. RFAs as a Response to Breakdowns in Informal Communication

If you plan on issuing RFAs, read Rule 90 (all of it) and Rule 70(b)(1). RFAs should be issued more than 75 days before the call of the case for trial. The 75-day deadline is because motions to review RFAs must be filed no later than 45 days before the call of the case.[26]

A. Content of RFAs

Rule 90(b) requires that RFAs include a preliminary statement that if the answering party fails to respond, the RFAs are deemed admitted. Although not required, include the day and date the response is due, confirm that the date is not a weekend or holiday, and specify that the response must be filed with the court.

Depending on the nature of your RFAs, consider if a "definitions" section is helpful to promote clarity and preempt vagueness objections.[27] Also, consider including a statement in the preamble similar to the statement used by the taxpayers in *Beveled Edge* that if clarification is needed as to any RFA (such as to the scope or meaning of the RFA), the answering party should contact the requesting party.

If the requesting party seeks an admission that a document is authentic, the document should be included as an exhibit and be labeled. Double-check that the exhibit number on the exhibit matches the exhibit number in the RFA. (This error happens more than it should.)

Review the RFAs to gauge the utility of the response and to anticipate objections. The answering party is required to admit or deny, and the denial "shall fairly meet the substance of the [RFA]." If, given the phrasing of the RFA, the response of "admits" or "denies" would not be

[18] *See* Rule 90(a) (RFAs can relate to "the genuineness of any documents"); *Beveled Edge Insurance Co.*, T.C. Memo. 2026-57; Order, *Kohari v. Commissioner*, No. 11893-15 et al., at 9 (T.C. Apr. 5, 2017).

[19] Rule 91(a)(1).

[20] *Id.*

[21] *Id.*

[22] Rule 91(a)(1); *Warsaw Photographic Associates Inc. v. Commissioner*, 84 T.C. 21, 42 (1985); *Leo v. Commissioner*, T.C. Memo. 2025-9. The parties often use a standard preamble that requires the parties to note objections in the stipulation paragraph. *Leo*, T.C. Memo. 2025-9; *Bailey v. Commissioner*, T.C. Memo. 2021-55.

[23] Rule 91(f)(1).

[24] Rule 91(f)(1).

[25] Rule 91(f)(2).

[26] Rule 90(e). *See* 109 T.C. 599 (Reporter's Note to 1997 amendment).

[27] *See Worrall v. Commissioner*, No. 14793-22 et al., at 3 (T.C. Mar. 18, 2025); *Berkun v. Commissioner*, No. 22550-17 (T.C. Dec. 20, 2024).

clear, then the RFA is not specifically tailored to be useful.[28]

Anticipate objections and redraft the RFAs to preempt the objections:

- *Vagueness*. RFAs should be specific and subject to one interpretation only. Where appropriate, include temporal restrictions to limit ambiguity.[29]
- *Compound requests*. Compound requests that follow a logical or chronological order are permitted if the RFA can be answered in sequence with appropriate designation or qualification.[30]
- *Legal conclusions*. RFAs that touch on the law can take different forms. Permissibility depends on phrasing. Proposed hypotheticals are improper.[31] Rule 90(a) explicitly permits opinions "of the application of law to fact."[32] An RFA can ask a party to admit that a certain application of law to a certain factual situation is correct. An RFA can also ask a party to admit that the party holds a certain opinion about the application of law to a certain factual situation.[33]
- *Central issue in a case*. An RFA asking a genuine issue for trial is permitted. The answering party can, consistent with Rule 90(g)(3), deny the matter so long as the party has a reasonable ground for doing so or an explanation why the RFA cannot be admitted or denied.[34]
- *Relevance*. Although relevancy objections can be raised, Rule 90(c) requires answering the (irrelevant) RFA.[35] If the RFA is improper (and irrelevant), move under Rule 103 for a protective order.
- *Documents speak for themselves*. RFAs can ask about the construction and interpretation of statements in documents, for example, under principles of contract interpretation. This objection was at issue in *Estate of Allensworth*, and the court overruled the objection because the RFA was explicitly covered by Rule 90.
- *Burden*. RFAs cannot be overly burdensome.[36]
- *Disclosure of taxpayer information*. Section 6103, which, subject to exceptions, prohibits the commissioner from providing information about other taxpayers, applies to the commissioner, not a taxpayer.[37]

B. Responses by the Answering Party

Responses to RFAs must be filed with the court within 30 days. If you anticipate needing more time, before the 30-day deadline expires, move under Rule 50 for an extension.[38] If you anticipate filing a motion for a protective order under Rule 103 because of undue burden associated with responding to the RFA, that, too, should be filed before the 30-day deadline.

The answering party must (1) specifically admit or deny the RFA in whole or in part, (2) state that the RFA cannot be truthfully admitted or denied and detail why, or (3) object to the RFA, detailing the reasons for the objection.[39] The

[28] *See*, *e.g.*, *Pearsall*, 62 T.C. 94 (1974) ("The request should be made in plain concise terms so that it may be admitted or denied without qualification."); *Waltner v. Commissioner*, T.C. Memo. 2014-35 at *7 (admissions overly broad); *Kohari*, No. 11893-15 et al., at 3, 4 (T.C. Apr. 5, 2017).

[29] *See Kohari*, No. 11893-15 et al., at 4-8 (T.C. Apr. 5, 2017).

[30] *See Beveled Edge Insurance Co.*, T.C. Memo. 2026-57 at *9; *Davis v. Commissioner*, No. 14870-20 et al. (T.C. Aug. 14, 2023).

[31] *See Estate of Allensworth v. Commissioner*, 66 T.C. 33, at 38 (1976) (noting that an RFA for the expression of abstract principles of law may not be the subject of admissions); *Hersch*, T.C. Memo. 1992-222 at *6 (distinguishing between requesting that "a company is thinly capitalized when its debts account for such a large proportion of its capital structure that the amount of its equity capital is negligible or negative," which is improper, with requesting that a party admit that a particular corporation is thinly capitalized, which is within the scope of Rule 90 (although define "thinly capitalized" because that term can reasonably be construed as vague)); *Waltner*, T.C. Memo. 2014-35 at *8 (finding improper an RFA that called for legal conclusions and posed hypotheticals).

[32] *Estate of Allensworth*, 66 T.C. at 38-39.

[33] *Hersch*, T.C. Memo. 1992-222 at *5-*6.

[34] *See Estate of Allensworth*, 66 T.C. 33; *Hersch*, T.C. Memo. 1992-222 at *10-*11 ("No issue or fact is specially immune from a request for admission.").

[35] *Hersch*, T.C. Memo. 1992-222 at 5; *Swanson v. Commissioner*, No. 14032-06 (T.C. Nov. 16, 2007).

[36] *Hersch*, T.C. Memo. 1992-222 at *5; *see* Rule 103 (motion for protective order because of undue burden).

[37] *See FBA St. Clair Prop. C LLC v. Commissioner*, No. 14406-23, at 2 (T.C. Sept. 2, 2025); *Lakepoint Land II LLC v. Commissioner*, No. 13925-17, at 7 (T.C. Aug. 22, 2023).

[38] *See Dahlstrom v. Commissioner*, 85 T.C. 812, 818 (1985).

[39] Rule 90(c); *Pickney v. Commissioner*, No. 5050-19, at 7-8 (T.C. Sept. 13, 2021).

answering party cannot avoid admitting or denying an RFA by providing documents instead.[40] If the answering party cannot admit to an entire RFA, the answering party must specify as much of the RFA as is true and deny or qualify the rest.[41] The answering party must specify which part of the RFA is denied.[42]

If an RFA is objected to, the objection details the basis for the objection. If a portion of an RFA can be answered notwithstanding an objection to another part of the RFA, the answering party is expected to answer the nonobjectionable portion.

If the answering party does not know the answer to an RFA, the answering party must make a reasonable inquiry.[43] The success of a response for lack of information sometimes depends on who controls the information and whether it can be corroborated.[44] Failure to answer because of lack of records is insufficient when the information is within the personal knowledge of the answering party.[45]

C. Withdrawal or Modification of an RFA

Under Rule 90(f), the court can withdraw or modify an RFA (deemed or otherwise):

> 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.[46]

[40] *Waltner*, T.C. Memo. 2014-35 at *8.

[41] Rule 90(c).

[42] *See Pickney v. Commissioner*, No. 5050-19 (T.C. May 13, 2021).

[43] Rule 90(c) (third to last sentence); *Cerejo v. Commissioner*, No. 23204-16 (T.C. Oct. 21, 2021).

[44] *See Waltner*, T.C. Memo. 2014-35 at *8 (rejecting the commissioner's response of lack of information about the meaning of transcript codes on an IRS transcript); *Boso*, T.C. Memo. 1995-228 at 10-11 (lack of information permitted because requesting party withheld documents and refused to consult with the answering party); *Carters Lake Land LLC v. Commissioner*, Nos. 1034-21 et al. (T.C. July 21, 2025) at 3 (lack of information response permitted because the commissioner was corroborating information it had with recently subpoenaed documents); *Skylab Series of Fortress Insurance LLC v. Commissioner*, Nos. 25669-16 et al., at 3-4 (T.C. Sept. 27, 2024) (lack of information response permitted because requesting party never produced records to answering party).

[45] *See Pickney v. Commissioner*, No. 5050-19, at 3-4, 6-8 (T.C. Sept. 13, 2021).

[46] *See Hutchings v. Commissioner*, No. 13321-20 (T.C. Jan. 2, 2024); *Lakepoint Land II LLC*, No. 13925-17 (T.C. Aug. 22, 2023).

When evaluating whether to relieve a party of a deemed admission, the court may consider factors such as the parties' cooperation in the discovery and stipulation process, the parties' general compliance with the court's rules, evidence that contradicts the deemed admissions, and prejudice that may result by withdrawing deemed admissions.[47]

D. Incorporate the Facts Obtained in RFAs Into Stipulations

The facts admitted through RFAs (and discovery) should be included in the stipulations.[48] Once you receive admissions (and discovery responses), include those facts in proposed stipulations. If you anticipate that you will need to move to compel the proposed stipulation, include that in your timeline.

V. Conclusion

The court has considerable discretion in determining the sufficiency of responses to RFAs and motions to compel under Rule 91(f).[49] As expected (and required), the parties should informally identify which facts and issues are agreed and unagreed, with agreed facts memorialized in stipulations.

When disagreements over the narrative of the stipulations cannot be resolved, focus on reaching agreement about the authenticity of exhibits. If that becomes unsuccessful, issue RFAs tailored to narrow specific factual points and issues to prepare for trial that are incorporated into a stipulation. To the extent that your opposing party refuses to stipulate, move to compel stipulations under Rule 91(f). For trial, at a minimum, present evidence on the facts that are not addressed in the stipulations. Finally, as an officer of the court, act in good faith. If it helps to hear, for the (hopefully rare) times you are at an impasse with opposing counsel about developing

[47] *See Andrade v. Commissioner*, No. 8556-11 (T.C. July 11, 2012).

[48] Rule 91(a)(2).

[49] A trial court's evidentiary ruling is reviewed for an abuse of discretion and will not be reversed unless it is "manifestly erroneous." *Savannah Shoals LLC v. Commissioner*, No. 24-12661 (11th Cir. July 16, 2026) (slip. op. 10).

the factual record informally, understand that it typically means that the facts or the law or both are on your client's side and that this, too, shall pass. ■