

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

EATON CORPORATION AND	)	
SUBSIDIARIES,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 5576-12.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	

**ORDER**

On August 20, 2014, petitioner filed a motion to compel discovery. Petitioner seeks an order compelling respondent’s representatives Steven A. Musher and Patricia M. Lacey to appear for continuations of their previously scheduled depositions and to answer petitioner’s relevant questions. On September 19, 2014, respondent filed a response to petitioner’s motion to compel. On September 26, 2014, petitioner filed a reply to respondent’s response.

By Order dated June 6, 2014, this Court directed respondent to submit to various depositions. The Order states “that respondent shall comply with his agreement to make available for deposition Mr. Musher and any other IRS representative with firsthand, substantive knowledge of the specific ground(s) that respondent relied on in canceling the APAs and the specific facts supporting each ground.”

Petitioner is an industrial manufacturer that licensed technology to its Puerto Rican and Dominican Republic subsidiaries to manufacture breaker products. Petitioner and respondent entered into advance pricing agreements (APAs) governing its breaker product purchases. The APAs described the method for determining arm’s length prices under section 482.<sup>1</sup> Respondent determined petitioner had not complied with the terms and conditions of the APAs and canceled them retroactively. Respondent adjusted petitioner’s income under section 482.

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<sup>1</sup>All Section references are to the Internal Revenue Code, as amended and in effect for the years at issue, unless otherwise indicated.

Petitioner contends the depositions of Steven Musher, Associate Chief Counsel (International), the IRS official authorized to cancel APAs, and Patricia Lacey, the then APA team leader who conducted the APA Annual Report Review that led to the cancellation of petitioner's APAs, did not provide the discovery that petitioner sought. Petitioner contends further that respondent made substantial objections and instructed the witnesses not to answer numerous question. Petitioner contends that Mr. Musher recalled very few details and was instructed improperly by respondent not to answer many questions.

During Mr. Musher's deposition, he testified that the decision to cancel petitioner's APAs was "a widely consulted decision" and that there were "extensive communications." However, he did not have "specific recollections of who or what or where at what time" regarding the communications.

Respondent contends that petitioner used the depositions as an effort to discover protected communications. Respondent states that petitioner is seeking the depositions of six additional current and former Service employees. On April 4, 2014, respondent provided petitioner with a 134-page statement setting forth the IRS's decision to cancel the APAs. Petitioner contends that this document is not comprehensive. Petitioner further contends that Ms. Lacey, the primary author of the April 4<sup>th</sup> document, was not allowed to describe the specific justification for, and the factual support underlying, the cancellation of the APAs.

Upon due consideration, it is

ORDERED that petitioner's motion to compel discovery is granted in that respondent shall make available for deposition Ms. Lacey to provide substantial knowledge of the specific ground(s) that respondent relied on in canceling the APAs and the factual bases underlying the justifications therefor, including information from her December 5, 2011 memorandum on that addresses reasons for canceling the APAs on a date agreeable to both parties no later than November 5, 2014. It is further

ORDERED that the parties shall agree on which one of the six witnesses that petitioner has requested to depose that respondent will make available on a date agreeable to both parties no later than November 14, 2014, and this witness should have firsthand, substantive knowledge and should review the December 5, 2011, memorandum prepared by Ms. Lacey prior to the deposition. It is further

ORDERED that the parties shall submit a joint status report on or before November 21, 2014, regarding the progress made on discovery.

**(Signed) Kathleen Kerrigan  
Judge**

Dated: Washington, D.C.  
October 15, 2014