

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

CF HEADQUARTERS CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 22321-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared for trial at the New York, New York trial session commencing December 8, 2014. On October 24, 2014, petitioner filed a Motion to Compel Production of Documents (Motion to Compel) seeking an order compelling respondent to produce documents requested in Petitioner’s Request for Production of Documents, served on respondent on July 9, 2013. Respondent was directed to respond, and timely did so in respondent’s Response to Petitioner’s Motion to Compel Production of Documents, filed November 10, 2014 (Response).

The present controversy centers upon petitioner’s request for all documents in respondent’s possession, custody, or control relating to Notice 2003-18, 2003-1 C.B. 699, or the legal conclusions therein. Upon review of the parties’ respective submissions, the Court concludes that petitioner’s Motion to Compel should be denied for two reasons, either of which provides sufficient grounds.

First, respondent sent his response to petitioner’s Request for Production of Documents, wherein he objected on privilege grounds to the production of numerous responsive documents, on August 9, 2013. Included with respondent’s response was a privilege log. Nonetheless, although petitioner now contends that Notice 2003-18 “is central to respondent’s case” and that petitioner “has made a clear showing of need”, petitioner waited approximately 14.5 months after learning respondent’s position before filing its Motion to Compel. Indeed, petitioner’s Motion to Compel was filed on October 24, 2014--the last day such a motion could be filed unless otherwise authorized by the Court. See Rule 70(a)(2),

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Tax Court Rules of Practice and Procedure. Petitioner also made no mention of any such outstanding discovery dispute in the Joint Status Report it filed on October 3, 2014.

Petitioner could have filed a motion to compel at any time on or after August 9, 2013--for documents that it would now have the Court believe are critical to its preparation for trial. Remarkably, petitioner offers no explanation for this delay. In the circumstances, given the volume of documents in dispute, petitioner's eleventh-hour filing appears at best dilatory and at worst a deliberate attempt to thwart the orderly and expeditious resolution of this case.

Second, respondent has shown to the Court's satisfaction that any documents underlying Notice 2003-18 are not relevant to the issues in this case. Respondent avers, and his previously filed Pretrial Memorandum substantiates, that he does not intend to rely on Notice 2003-18 in support of his position that the grant proceeds at issue constitute income to petitioner under I.R.C. section 61.¹ While respondent concedes that he will rely on many of the same Code sections and cases as those contained in Notice 2003-18, we agree that doing so would not constitute reliance on the Notice. For the reasons more fully articulated by respondent in his Response, we find that any documents underlying Notice 2003-18 are not relevant. See also Greenberg's Express v. Commissioner, 62 T.C. 324, 328 (1974). We would only add that insofar as petitioner speculates that the withheld documents are factual in nature, we find the possibility that any such factual material therein may be relevant to petitioner's case is too remote to raise a serious issue. The latest of the disputed documents is dated March 19, 2003.² According to petitioner's Motion to Compel, petitioner was formed on August 20, 2003. The grant proceeds at issue were presumably received by petitioner in 2007.

¹Respondent further states that he may rely on Notice 2003-18 for purposes of showing petitioner's liability for an accuracy-related penalty pursuant to I.R.C. sec. 6662. However, we agree with respondent that it is the Notice as published which is relevant for this purpose, and not any underlying documents that were created before publication.

²Respondent concedes that documents dated March 21, March 28, and April 21, 2003, in the privilege log were withheld on erroneous privilege claims and were provided to petitioner concurrently with the filing of respondent's Response.

Petitioner's contentions regarding relevance are all conclusory and do not overcome the foregoing.³

For these reasons, it is

ORDERED that petitioner's Motion to Compel Production of Documents, filed October 24, 2014, is denied.

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
November 13, 2014

³For the reasons outlined in respondent's Response, we find no merit in petitioner's contention that the assertion of privilege was made by an individual without authority to do so.