UNITED STATES TAX COURT
WASHINGTON, DC 20217

CAYLOR LAND & DEVELOPMENT, INC., ET AL.,		
Petitioner(s),		
v.	Docket No.	17204-13, 17205-13, 17223-13, 19238-13, 23921-13, 23922-13, 23931-13, 11348-14, 17919-14, 17920-14, 17921-14, 17922-14.
COMMISSIONER OF INTERNAL REVENUE,		
Respondent		

O R D E R

These cases were on the Court's September 22, 2014 trial calendar for Phoenix, Arizona, but are now set for trial to begin on February 9, 2016. There was a recent flurry of motions, and the Court spoke with the parties and counsel for Artex Risk Solutions, Inc. on November 19, 2015. Artex has moved for issuance of an order under Federal Rule of Evidence 502(d); the Court wants to let the Commissioner explain his opposition in writing. Some of the motions arise from whether three contested documents are privileged; the Court wants to review them *in camera*.

Petitioners also moved *in limine* to exclude one of respondent's expert witnesses, Ms. Roberta Garland. Respondent had identified her as one of his experts on November 6, 2015. According to the terms of the Court's pretrial order, "to the extent that either party is under a duty to supplement their responses to formal or informal discovery, the parties agree that such supplements . . . will be provided as required under Rule 102 but no later than November 6, 2015."

So how does meeting a deadline become missing a deadline?

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Petitioners argue that they had served an interrogatory to discover who respondent planned to call as witnesses on June 10, 2015. He responded with the names of two other witnesses, but added that he "may call an expert witness who will testify regarding actuarial sciences" and stated that he would identify any such witness when he had finished the bureaucratic procedures needed to hire her. Rule 102(1)(B) specifically requires a party to supplement his response to an interrogatory seeking the identity of an expert witness.

Petitioners argue that Rule 102 says that this duty is to *seasonably* supplement, and that waiting till the deadline that the Court set in its pretrial order for just this kind of supplementary response is not good enough.

We disagree. "Seasonably" is just an old-fashioned synonym for "timely." *See, e.g., Georgianna Nadeau Henault & Sun Trust Co. v Commissioner*, B.T.A.M. (P-H) P 33681 (B.T.A. 1933); *Egan v. Commissioner*, 41 B.T.A. 204, 205 (1940). Rule 102(3) allows the Court by order to impose a duty to supplement, which is what we did and we included a more precise deadline than "seasonably."

Since we set a deadline and respondent met the deadline, it is

ORDERED that petitioners' November 10, 2015 motion *in limine* is denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
November 23, 2015