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**UNITED STATES TAX COURT**

WASHINGTON, DC 20217

PA

PHYLLIS E. MCGRADY & )  
CHRISTOPHER R. ANTONIACCI, )  
 )  
Petitioners )  
 )  
v. )  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent )  
 )

Docket Nos. 20602-12,  
11142-13.

**ORDER**

A partial trial of these cases was held on February 9-10, 2015, and a further trial was held on December 8-9, 2015, in Philadelphia, Pennsylvania. Currently before the Court are respondent's Motions for Leave to File Amendment to Answer filed February 9, 2015. Petitioners filed an Opposition on March 2, 2015. We shall deny the motions.

The notices of deficiency in these cases disallowed charitable contribution deductions of \$4.7 million that petitioners claimed in 2007 (with carryovers to later years) for donating certain real property interests to the Heritage Conservancy, an organization tax-exempt under section 501(c)(3). The petitions were filed on August 16, 2012, and May 20, 2013, respectively. The answers were filed on October 15, 2012, and June 26, 2013, respectively.

On February 9, 2015, the first day of trial, respondent moved for leave to amend his answers to assert increased deficiencies by disallowing a deduction for a separate charitable contribution, in the amount of \$268,000, that petitioners made to the Heritage Conservancy in 2007 in the form of cash and common stock. In seeking leave to amend his answers, counsel for respondent alleges that he did not become aware of this separate \$268,000 contribution until petitioners' counsel provided him, in January 2015, with a complete copy of petitioners' 2007 Federal income tax return.

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Rule 41(a) of this Court's Rules, as applicable to this stage of the case, provides that "a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be given freely when justice so requires." Rule 41(a) reflects "a liberal attitude toward amendment of pleadings." Stephens v. Commissioner, 60 T.C. 1089 (1974) (explanatory note accompanying promulgation of Rule 41). Whether leave will be granted to file an amendment to answer is a question falling within the sound discretion of the Court. Waterman v. Commissioner, 91 T.C. 344, 349-350 (1988). "The types of reasons that might justify denial of permission to amend a pleading include undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, and undue prejudice to the opposing party." Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 597 (5th Cir.1981) (citations omitted).

We think that respondent has unduly delayed in moving to amend his answers. The administrative case file makes clear that the IRS examination team was aware of the \$268,000 contribution and made an explicit decision not to disallow it. The rationale that respondent now asserts for disallowing that deduction seems to be the same as its rationale for disallowing the deduction for the \$4.7 million contribution. If respondent's trial counsel believed that the examination team had erred in failing to disallow a deduction for the \$268,000 contribution, it is unclear to the Court why respondent waited two and one-half years after filing his answer in docket no. 20602-12 before seeking leave to amend his answers. Since petitioners' 2007 tax year was the principal tax year under audit, the assertion that petitioners' 2007 tax return was not previously available does not strike the Court as a sufficient excuse for this delay.

In consideration of the foregoing, it is

ORDERED that respondent's Motions for Leave to File Amendment to Answer, filed February 9, 2015, are denied.

**(Signed) Albert G. Lauber  
Judge**

Dated: Philadelphia, Pennsylvania  
December 9, 2015