

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

MESCALERO APACHE TRIBE,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 28120-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
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ORDER

This case was on the Court’s September 21, 2015 trial calendar for El Paso, Texas. The Court continued it because the parties agreed that it was going to require some greater-than-average amount of pretrial work. That became clearer when petitioner moved to compel discovery of respondent’s records of third-party information. The Court spoke with them and decided that it was the unusual discovery motion that would benefit from some more research.

One key fact that this briefing has revealed is that petitioner is moving to compel *informal* discovery requests. That’s not how the Court’s procedure works. We insist on informal discovery, but if that doesn’t work the next step is formal discovery, not a motion to compel. The one case that petitioner cites in support of its position, *Schneider Interests L.P. v. Commissioner*, 119 T.C. 151 (2002), holds only that formal discovery may not precede informal discovery. Only if informal discovery fails, we held, may parties “resort to the formal discovery provisions of the Tax Court Rules.” *Id.* at 156. Our Rule 104 which governs motions to compel discovery presupposes formal discovery. It is therefore

ORDERED that petitioner’s October 15, 2015 motion to compel discovery is denied, albeit without prejudice should formal discovery fail.

SERVED Apr 29 2016

The parties should be aware that the Court intends to add this case to this fall's El Paso trial calendar.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
April 29, 2016