

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

MCM INVESTMENT MANAGEMENT, LLC,)	
MARK & C'ANN MCMILLIN FAMILY)	
TRUST DATED 04/09/1990, TAX MATTERS)	
PARTNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 13550-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case currently is set for trial at the June 19, 2017, Special Trial Session of the Court in San Francisco, California. On March 8, 2017, respondent filed a Motion to Compel Production of Documents and pursuant to Order of the Court dated March 13, 2017, petitioner filed a Response to Motion to Compel Production of Documents, along with the Declaration of Henry Cheng in Support of Response to Compel Production of Documents.

Respondent’s motion seeks “the workpapers/files of FMV Opinions, Inc. (FMVO) relating to the appraisal” provided by FMVO to petitioner dated June 9, 2010 (FMVO Appraisal). The workpapers/file sought are defined as “the collection of documents, acquired, considered, or used by FMVO in preparing the [FMVO] Appraisal.” Thus, the request necessarily is limited to those documents in existence on the date the FMVO Appraisal was provided to petitioner.

Petitioner objects that respondent’s discovery request prematurely seeks expert witness workpapers because petitioner has engaged the preparer of the FMVO Appraisal, Thomas C. Berg, Jr., as an expert witness in this case. Petitioner states in support of its objection that Mr. Berg’s workpapers sought by respondent in the Motion to Compel will be provided along with his expert witness

report on April 20, 2017, the due date for exchanging expert witness reports and workpapers.

The documents used or consulted to prepare the FMVO Appraisal are discoverable irrespective of whether they are provided to an expert witness. Petitioner does not argue otherwise. Providing them to an expert witness cannot convert them into expert witness workpapers shielded from discovery prior to the deadline for exchanging workpapers. Therefore, they are subject to discovery regardless of whether the expert witness is the same individual who prepared the original appraisal. Further, because petitioner intends to produce the documents on April 20, 2017, we do not view requiring their production on a short deadline to be unduly burdensome. We further believe that production on a short time frame is necessary so that expert witnesses for both parties have the same information relating to the FMVO Appraisal. For the foregoing reasons, therefore, it is

ORDERED that respondent's Motion to Compel Production of Documents, filed March 8, 2017, is granted in that petitioner is ordered to produce for inspection and copying at a mutually agreeable time and place but no later than April 7, 2017, the documents requested in Respondent's Request for Production of Documents served on Petitioner on January 27, 2017.

**(Signed) Cary Douglas Pugh
Judge**

Dated: Washington, D.C.
March 30, 2017