

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

DYNAMO HOLDINGS LIMITED)
PARTNERSHIP, DYNAMO, GP, INC., TAX)
MATTERS PARTNER, ET AL.,)
)
Petitioners,)
)
v.) Docket Nos.2685-11, 8393-12.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

Trial was held January 23, 2017 through February 3, 2017, and February 13, 2017 in Miami, Florida.

At the close of trial, the Court set a briefing schedule. The Court directed the parties to submit simultaneous opening briefs not in excess of 120 pages. The Court instructed, “[t]he page limit does not include a title page, a cover page, a table of contents, a table of authorities, an[y] appendices, signature page, certificate of service, or the proposed findings of fact. In other words, that is for the body of the brief. All other normative rules for brief formatting apply.” Tr. 2721-2722.

That reference to the “normative rules” is an allusion to Rules 151 and 23 of the Tax Court Rules of Practice and Procedure. Rule 151(e) provides that “[a]ll briefs shall conform to the requirements of Rule 23”. Rule 23 generally provides the form and style requirements for papers submitted to our Court, and specifically provides at 23(d):

All such papers shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than ¾ inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch produced by a typewriting element, 12-point type produced by a nonproportional print font (e.g., Courier), or 14-point type produced by a proportional print font (e.g., Times

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New Roman), with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented. Double-spaced lines shall be no more than three lines to the vertical inch, and single spaced lines shall be no more than six lines to the vertical inch.

On May 5, 2017, petitioners submitted their opening brief. The body of the brief, as formatted, was 120 pages.

On May 23, 2017, respondent filed a motion to strike petitioners' post-trial opening brief because petitioners' opening brief exceeded the page limit. In respondent's motion, he alleges that petitioners used Times New Roman 12-point font. Respondent purports to have converted the body of petitioners' brief into Times New Roman 14-point font. Based on that conversion, respondent concluded that petitioners' opening brief exceeded the Court's page limit by 14 pages. Respondent attached as an exhibit the reformatted brief.

Based on the Court's review of petitioners' opening brief and respondent's motion, it remains unclear the extent to which petitioners' opening brief exceeds the page limits.¹ Yet we are reluctant to further delay this case with the back-and-forth of motion practice about font sizes, line spacing, margins, etc.²

Accordingly, if petitioners' opening brief, as filed, is in conformity with the Court's instructions and rules, petitioners may file a response to this order certifying that their brief is in conformity.

Alternatively, if petitioners' opening brief, as filed, is not in conformity with the Court's instructions and rules, petitioners may file an amended opening brief that is in conformity with the Court's instructions and rules AND, separately, a response to this order certifying that their amended brief is in conformity with the Court's instructions and rules.

¹ Accounting for various font choices and other formatting corrections, it is possible (though it appears unlikely) that petitioners' opening brief does not exceed the page limits.

² We are likewise reluctant to further delay this case with the back-and-forth of motion practice about enlarging page limits. Any such motion should have been filed before briefs were due. That time has now passed.

If petitioners must amend their brief to bring it in conformity with the Court's instructions and rules (including page limits), petitioners may only make the following edits:

- Formatting changes to bring the brief in conformity with the Court's instructions and rules (e.g., corrections to font size, line spacing, etc.), and
- Deletions of text.

Accordingly, it is

ORDERED that respondent's motion to strike petitioners' post-trial opening brief is denied. It is further

ORDERED that petitioners shall file a response to this order by Tuesday, May 30, 2017, certifying either (1) that their opening brief was in conformity with the Court's instructions and rules, or (2) that their opening brief was not in conformity with the Court's instructions and rules but that their amended brief (as ordered below) is in conformity with the Court's instructions and rules. It is further

ORDERED that, if petitioners certify that their opening brief was in conformity with the Court's instructions and rules, then petitioners shall provide the Court and respondent's counsel with an electronic copy of their opening brief in native format (e.g., ".doc"). The native format file shall be delivered no later than Wednesday, May 31, 2017. It is further

ORDERED that, if petitioners certify that their opening brief was not in conformity with the Court's instructions and rules, then petitioners shall file an amended opening brief that is in conformity with the Court's instructions and rules, however the only permitted changes between the original opening brief and the amended opening brief are (1) formatting changes to bring the opening brief in conformity with the Court's instructions and rules and (2) deletions of text. It is further

ORDERED that, if petitioners file an amended opening brief, petitioners shall provide the Court and respondent's counsel with a redline comparison of petitioners' opening brief to petitioners' amended opening brief. The redline shall be delivered no later than Wednesday, May 31, 2017. It is further

ORDERED that, if petitioners file an amended opening brief, petitioners shall provide the Court and respondent's counsel with an electronic copy of the amended opening brief in native format (e.g., ".doc"). The native format file shall be delivered no later than Wednesday, May 31, 2017.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
May 23, 2017