UNITED STATES TAX COURT
WASHINGTON, DC 20217

RENKA, INC.,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 15988-11R.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
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	)	
	)	

O R D E R

This case was assigned to this division of the Court because it is related to four others that were originally on the June 18, 2012 San Francisco trial calendar. It arises from the Commissioner's determination that Renka's ESOP no longer qualified as a tax-exempt trust under I.R.C. § 401(a). Renka timely filed a petition for a declaratory judgment under I.R.C. § 7476 that the Commissioner's determination was wrong -- that in fact the ESOP did continue to qualify under I.R.C. § 401(a). The parties stipulated to the administrative record, but did not agree to submit the case for decision under Tax Court Rule 122 because Renka (despite the stipulation) objected to the completeness of that record. We ultimately denied the Commissioner's summary-judgment motion and invited Renka to follow up with a motion to supplement the administrative record. Renka now wishes to be relieved from its stipulation to the administrative record so that it can add five additional documents. The Commissioner opposes this motion.

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Tax Court Rule 217(a) tells us what kind of evidence we can use to dispose of a declaratory judgment. Both parties agree that Renka must show good cause to introduce evidence not submitted to the Commissioner and contained in the administrative record. While it's true that Tax Court Rule 217(a) requires good cause for the addition of evidence in a declaratory judgment involving the *initial or continuing qualification* of a retirement plan, *Stepnowski v. Commissioner*, 124 T.C. 198, 205-07 (2005), this case involves the *revocation* of a retirement plan. Simply put, Tax Court Rule 217(a) allows us to go beyond the administrative record in a declaratory judgement case involving a revocation. *See RSW Enterprises v. Commissioner*, 143 T.C. 401, 406 (2014) (citing Tax Court Rule 217(a) and noting that "in cases involving a revocation, we are limited to the administrative record 'only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute'").[1]

Normally, we might allow Renka to submit the additional exhibits, but as the Commissioner points out, Renka already stipulated to the administrative record. Renka responds that the stipulation doesn't include an affirmation that the enumerated exhibits constituted the *entire* administrative record. We don't find this argument persuasive. Tax Court Rule 217(b)--which governs the procedure to follow in actions for declaratory judgment--requires the parties to file "the *entire* administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness" (emphasis added). We will therefore interpret the stipulation to mean exactly that. If Renka believed documents were missing, then he should not have stipulated to the administrative record. *Cf. Houston Lawyer Referral Serv., Inc. v. Commissioner*, 69 T.C. 570 (1978) (stipulation in non-revocation case didn't preclude motion to supplement administrative record with *oral* communications, but no good cause to do so where those communications not timely furnished in writing).

Stipulations are generally treated as conclusive admissions, and cannot be changed unless justice so requires. Tax Court Rule 91(e). Renka merely argues that the five additional documents should have been included in the administrative record because it believes they fall under the definition provided in Tax Court Rule 210(b)(12). The Commissioner disagrees and points out that the additional documents--which relate to an entirely different ESOP--were never part of the Renka ESOP audit and were not before him when he made his determination in

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[1] Neither party questioned the validity of this Rule.

this case. We believe the Commissioner and find that Renka has provided no other reason why justice requires us to allow changes to the administrative record.

We will disregard stipulations where the facts as stipulated are "clearly contrary to facts disclosed by the record." *Jasionowski v. Commissioner*, 66 T.C. 312, 318 (1976). But those are not the circumstances here.

It is therefore

ORDERED that petitioner's motion to supplement the record is denied. It is also

ORDERED that each party file any motion for summary judgment on the basis of the now-settled administrative record on or before November 17, 2017; any responses to the other party's motion must be filed on or before December 18, 2017. It is also

ORDERED that the parties may by stipulation filed with the Court change the deadlines of this briefing schedule.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
August 21, 2017