

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

DUANE PANKRATZ, ET AL.,)		
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Petitioner(s),)		
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v.)	Docket No. 21255-13,	27239-13.
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COMMISSIONER OF INTERNAL REVENUE,)		
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Respondent)		
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ORDER

These cases were on the Court’s June 15, 2015 St. Paul, Minnesota trial calendar, and arise from the 2008 and 2009 tax years. We continued them on petitioner’s motion because the cases presented a very large number of issues. The parties reasonably proposed to take some time to corral the relatively noncontroversial issues, and then identify the remaining issues that both thought had a reasonable probability of needing to be tried. The Court issued a pretrial order whose deadlines were extended when no St. Paul calendar was set until September of this year.

The cases seemed to be moving in the right direction of narrowed issues and stipulated facts for those that remain, but then the Court learned that settlement talks had broken down. We spoke with the parties on July 21, 2017 to urge them to avoid a substantiation festival of check-and-invoice review. We learned that there is a good deal of disagreement on the documents that have been exchanged (or not), the issues that were raised (or not) in the notice of deficiency and pleadings, and whether (or not) to set deadlines differing from the pretrial order’s deadlines for exchange of expert-witness reports or pretrial memos.

On August 3, 2017 petitioner moved to compel production of documents -- specifically documents that he described in requests 1-11 and 13. The first 11 requests are all equally broad -- number 1, for example, seeks “all documents (including but not limited to, the Revenue Agent’s file, notes, work papers, technical guidance memorandums, national office memorandums and records obtained from third parties) related to the Petitioner.” The next 10 are quite similar, except that the name of a business entity controlled by petitioner is substituted for “petitioner”.

One might think this is way too broad a description. But the instructions go quite a way toward narrowing this dispute -- they stress that the information sought is only about the 2008 and 2009 tax years, and that the purpose of the request is to figure out what documents respondent is relying on as a basis for his case.

Beneath this dispute is another one -- about what documents petitioner produced to “respondent’s counsel” before June 30, 2015. The Court set this date because of dilatoriness in petitioner’s document exchange the last time this case was on the Court’s trial calendar. The Court construes this order to mean that documents petitioner produced at audit, any IRS Appeals proceeding, or CDP proceeding or the like has been “produced to respondent’s counsel.”

The Court understands that respondent has already produced the nonprivileged portion of respondent’s administrative files. The Court will not order the production of documents already in petitioner’s possession, which would be pointlessly inefficient. The Court will not require the production of such broadly defined classes of documents to enable petitioner to help it prove what documents have already been exchanged before if the parties continue to dispute that. It will instead order the production of any remaining documents that respondent has that he intends to introduce at trial. It will likewise order the creation of a privilege log on the low-probability possibility that respondent claims privilege on any such documents.

Document request 13 is a bit different. This request is also very broad -- “all documents reflecting communication between or among IRS employees, third parties, contractors, Petitioner’s representatives, and any other person related to petitioner and his Schedule C entities.” Respondent reasonably objects on these grounds, and points out as well that “person related to petitioner” could include relatives near and wide who have not even a remote connection to this case. Petitioner has narrowed this infelicitous phrasing to the various business entities

that petitioner holds interests in -- and not all his second cousins, for example -- but the overbreadth problem remains. This request is quite similar to that which we held overbroad in the founding opinion of Tax Court discovery law, *Branerton Corp. v. Commissioner*, 64 T.C. 191, 202 (1975).

It is therefore

ORDERED that petitioner's August 3, 2017 motion to compel the production of documents is granted only as to document production requests 1-11, and only to the extent of any remaining documents not already in petitioner's possession that respondent has and that he intends to introduce at trial. Respondent's counsel shall produce any such documents on or before September 11, 2017. If respondent for any reason claims privilege as to any of these, he shall serve on or before September 13, 2017 a privilege log on respondent's counsel that complies with Federal Rule of Civil Procedure 26(b)(5). *See Pacific Management Group*, 109 T.C.M. 1505, 1506 (2015).

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
September 7, 2017