

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

DUANE PANKRATZ, ET AL.,)		
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Petitioner(s),)		
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v.)	Docket No. 21255-13,	27239-13.
)		
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. These cases are set to be tried at that calendar.

On August 3, 2017 petitioner moved to have the Court review the sufficiency of respondent’s responses to requests for admission 18-36. These RFAs all relate to the core issue in these cases -- substantiation of various Schedule C expenses. Respondent persuaded the Court two years ago that petitioner was being dilatory in providing this information, and we set a deadline for him to produce any documentation that he might want to introduce at trial on these issues. Some documents came in, some had already come into the IRS, and some apparently came in only after the deadline. This last group is presumptively excludable.

In drafting the RFAs, petitioner attached at least some documents that will be subject to exclusion; he also apparently attached some that respondent thinks are excludable but petitioner does not. Petitioner then phrased the RFAs not as straightforward “Petitioner paid or incurred expenses in the amount of \$ X for such and such category of expense as claimed on Schedule C, line so and so;” but instead as “Petitioner provided proof of payment and invoices for 2008 Schedule C-1 costs of such and such in the amount of so forth.”

Respondent understandably views this as a backdoor way to get in evidence subject to the Court’s preclusion order. His responses generally took the form of denying that the attached documents had been provided in time, and then something about the substance of the RFA. For example, RFA 21 asked for an admission regarding advertising expenses. Here’s the answer (again, it is entirely representative of the set):

Admits petitioner’s proposed stipulations included unsubstantiated claims. Denies that cancelled checks show what was actually purchased. Denies that the documents referenced were provided to respondent’s counsel by June 30 [2015].

On a motion to review the sufficiency of responses to RFAs, Rule 90(c) tells us to analyze whether a denial fairly meets the substance of the request or includes a good-faith qualification of denial in part. Given the peculiarly legal phrasing petitioner chose to use -- had petitioner “provided proof of payment and invoices” for this or that expense -- respondent understandably and in good faith exercised caution about conceding the admissibility of documentation that might be “proof” only if admitted, but proof of nothing if excluded.

It is therefore

ORDERED that petitioner’s August 3, 2017 motion to review the sufficiency of answers or objections to request for admissions is denied.

**(Signed) Mark V. Holmes
Judge**

Dated: Washington, D.C.
September 8, 2017