UNITED STATES TAX COURT
WASHINGTON, DC 20217

SIEMER MILLING COMPANY,	)	**SR**
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 21655-15.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

This case is calendared for trial at a Special Session of the Court on December 5, 2017, in Indianapolis, Indiana. Before us is Siemer Milling's renewed motion under Rule 91(f) filed November 22, 2017.[1] This order closes the Court's intervention in the stipulation process and denies Siemer Milling's renewed Motion under Rule 91(f).

Siemer Milling made an initial attempt to prepare stipulations, but the Commissioner was uncooperative. Siemer Milling turned to the Court for assistance and sought an order to show cause why the proposed facts and evidence should not be accepted as established.

We gave the parties a do-over. We reviewed Siemer Milling's proposed stipulation and the Commissioner's response, and we found that neither party was without fault. Accordingly, we allowed Siemer Milling to resubmit its proposed stipulation of facts with specific citations to the documents upon which it relies to support each fact. We directed the Commissioner to provide a specific response to each proposed stipulation that the Commissioner did not accept without alteration. And we ordered each party to provide the Court with a copy of the correspondence. Both parties did as directed and they were able to agree on a handful of additional facts.

[1] All rule references are to references are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code in effect for the years in issue unless otherwise indicated.

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Finding the results of that process unsatisfactory, Siemer Milling renewed its motion under Rule 91(f) on November 22, 2017. The Court filed the Commissioner's annotated proposed stipulation of facts as his response to the motion and ordered a supplementary response. The Commissioner filed the supplementary response on November 29, 2017.

The stipulation processes is "the bedrock of Tax Court practice" and is necessary to ensure "expeditious trial of cases as well as for settlement purposes."[2] The stipulation process is governed by Rule 91. Under Rule 91(a)(1) parties are "required [to stipulate to] * * * all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute."

In addressing this motion one thing remains clear, both parties share blame for the breakdown of the stipulation process. On one hand, Siemer Milling repeatedly sought to have the Commissioner stipulate to facts that are fairly in dispute. Many of the fact statements are compound, and many involved pure characterizations of the law.[3] On the other hand, the Commissioner cited several bases for rejecting facts that are not well taken by the Court.

The Commissioner included a letter in his response to Siemer Milling's resubmitted proposed stipulation of facts. This letter and its attached annotated version of the stipulations is what the Court filed as the Commissioner's response to Siemer Milling's motion. The letter included ten bases for rejecting most of the facts from the stipulation. Those bases are as follows:

A. Respondent Cannot be Compelled to Stipulate to the Truth of the Matter Stated in the Source Documents
B. The Source Documents Contain Inadmissible Hearsay
C. The Matters Proposed for Stipulation Are Fairly in Dispute
D. Respondent Disputes Petitioner's Alleged Uncertainties and Process of Experimentation
E. The Narratives Contain Material Misstatement of Fact
F. The Proposed Stipulations Are Pervaded with Subjective Statements of Intent and Vague Terminology
G. The Engineering Memo Is Irrelevant and Merely a Statement of Petitioner's Claims

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[2] Branerton Corp. v. Commissioner, 61 T.C. 691, 691 (1974).

[3] A stipulation can include a statement of application of law to fact, but Rule 91(a) does not expressly contemplate stipulations as to pure questions of law.

H. Several of the Proposed Stipulations Concern Matters of Law
I. Petitioner Has Duplicated Proposed Stipulations
J. Other Specific Reasons For Rejecting Petitioner's Proposed Stipulations

Bases A, B, F (in part), and G are not well taken by the Court. Bases A, B, F (in part), and G can all be fairly summarized as objections to the source of the fact. But Rule 91 requires parties to stipulate to "all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute." There is no special exception for facts contained in documents that one party objects to for one reason or another. There is no special exception for facts that are supported by hearsay, admissible or otherwise. If a fact is not fairly in dispute it must be stipulated.

Examples might illustrate why the Commissioner's objections A, B, F, and G are erroneous. The Commissioner refuses to stipulate to facts that speak to knowledge or intent. In a case involving a request for innocent spouse relief, would the Commissioner accept a stipulation that the requesting spouse knew an item of income that was omitted from the return? Of course. Similarly, the Commissioner refuses to stipulate to facts that involve hearsay. In a case involving an accuracy-related penalty, would the Commissioner accept a stipulation that a return preparer told the taxpayer that the item of income should have been included in the return? Of course. The stipulation is not objectionable because of the source of the fact (knowledge or hearsay), but rather, the proposed stipulation may be objectionable if the fact is either disputed or fairly in dispute.

Basis D is also not well taken by the Court because it is irrelevant. In the explanation of basis D, the Commissioner states that he "cannot be made to stipulate to matters that go to the heart of the four-part test enumerated under I.R.C. § 41(d)(1) simply because petitioner paid its accountant to say that they are so." To restate this in perhaps a less charitable manner, the Commissioner objects to certain facts because to stipulate to them would not be strategically wise. While stipulating to a fact that goes to the heart of a question before the Court might pose a tactical challenge for the Commissioner, if a fact is not fairly in dispute, the Commissioner must stipulate to it. Where the Commissioner disputes the truth of the fact, he cannot be forced to stipulate to it. But if the fact is true but merely inconvenient, that inconvenience is irrelevant.

To the extent that the facts in the stipulation are vague, basis F is well taken.

Bases C, E, H, I, and J are well taken. The Commissioner is correct in rejecting facts that are fairly in dispute or that contain material misstatements of fact (bases C and E). Basis I is well taken to the extent that there are duplicated facts in the proposed stipulation. Basis J is well taken, though duplicative given that each of the specific objections cited in basis J goes to an issue that is either fairly in dispute, and therefore addressed by basis C, or a material misstatement of fact, and therefore addressed by basis E. Basis H is well taken to the extent that it relates to pure statements of law rather than to the application of the law to the facts.

Although several of the bases for not stipulating to certain facts are well taken, even cursory examination of the annotated proposed stipulation of facts leaves the Court with the sense that the Commissioner and Siemer Milling could have, with a little cooperation, come to agreement as to many more facts. However, the Court is not in the business of rewriting stipulations for the parties.

After reviewing each of the specific objections, there is little left the Court can do. Each fact for which there is an objection that is not well taken also has a perfectly appropriate objection. Accordingly, it is

ORDERED that the Court's November 27, 2017 order to show cause is discharged.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
December 4, 2017