

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

Carl Lawrence Collins, III,)
)
 Petitioner,)
)
 v.) Docket No. 2643-17.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On December 28, 2017, Mr. Collins electronically filed a document titled “Petitioner’s Motion for Leave for an Order of Discovery and to Compel Discovery” (the first motion). That motion was accompanied by another document similarly titled “P [sic] Petitioner’s Motion for Leave for an Order of Discovery and to Compel Discovery” (the second motion). Through his two motions, Mr. Collins appears to be asking us to do two things.

First, Mr. Collins appears to be asking that we compel the Commissioner to respond to an interrogatory seeking information underlying the examination of Mr. Collins’s 2010 return. Accompanying his motions is a document titled “Petitioner’s [sic] First Set of Interrogatory [sic] to Respondent”. Although the scope of the sole interrogatory is not explicitly limited, we infer it to be limited to the examination of the year at issue.

Second, Mr. Collins appears to be asking that we compel the deposition of an IRS employee. Accompanying his motions is a document titled “Notice of Deposition”, which asks that the deponent to also provide various documents underlying the examination of Mr. Collins’s 2010 return.¹

¹ Mr. Collins includes his unredacted social security number in his notice of deposition, which he filed in the public record of this case. We take this opportunity to remind Mr. Collins that papers filed in our Court are open to public inspection. Sec. 7461(a).

Before turning to his motions, we note that Mr. Collins is an attorney. Each of his papers is electronically signed under the heading “LAW OFFICE OF CARL L. COLLINS III” and includes his Michigan bar number. Mr. Collins is not admitted to practice in our Court.

Turning to his motions, we note that Mr. Collins’s second motion cites to rules 70, 71, 72, and 74 of the Tax Court Rules of Practice & Procedure and to rule 37 of the Federal Rules of Civil Procedure. Rule 37 of the Federal Rules of Civil Procedure addresses motions to compel discovery. As stated in our Rule 1(b),

Where in any instance there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.

We need not look to Federal Rule of Civil Procedure 37, because the Tax Court has its own rules for discovery (which Mr. Collins cited) including a specific rule for compelling discovery (which Mr. Collins did not cite).

Mr. Collins’s motions are procedurally defective. As a general matter, our rules require that parties “attempt to attain the objective of discovery through informal consultation or communication before utilizing the discovery procedures provided in [our] Rules.” Rule 70(a)(1). There is nothing in his motion indicating that Mr. Collins attempted informal, cooperative discovery. Beyond our general rules, we have a specific rule regarding obtaining the deposition of a party without consent. See Rule 74(c)(3). Reviewing the notice of deposition accompanying his motion, it is clear that Mr. Collins did not comply with Rule 74.

We note that the discovery sought by Mr. Collins appears to be in an effort to look behind the notice of deficiency issued in this case. We have long held that how the Commissioner conducted his examination is not relevant. The only issue before us is the determination of the correct tax liability of the taxpayer. For example, in Human Eng’g Inst. v. Commissioner, 61 T.C. 61, 66 (1973), we wrote, “As far as the deficiency notice is concerned, it is equally well established that the courts will generally not look behind such a notice to determine whether respondent’s agents followed the established administrative procedures in respect of investigation and according the petitioners a hearing.” An oft-cited case for this proposition is Greenberg’s Express, Inc. v. Commissioner, 62 T.C. 324, 327-328 (1974), in which we wrote:

As a general rule, this Court will not look behind a deficiency notice to examine the evidence used or the propriety of respondent's motives or of the administrative policy or procedure involved in making his determinations.

* * * The underlying rationale for the foregoing is the fact that a trial before the Tax Court is a proceeding de novo; our determination as to a petitioner's tax liability must be based on the merits of the case and not any previous record developed at the administrative level.

We will deny without prejudice Mr. Collins's motions as procedurally defective. If he chooses to refile them, he will need to address the relevance of the discovery he seeks. Accordingly, it is

ORDERED that Petitioner's Motion for Leave for an Order of Discovery and to Compel Discovery is denied without prejudice. It is further

ORDERED that the Clerk of the Court seal from the Court's public record Petitioner's Memorandum In Support Of Motion For Leave To File Discovery Interrogatories, Request To Produce And Deposition Notices (docket entry 9). The Court shall retain these documents in a sealed file which shall not be opened for inspection by any person or entity except by an Order of the Court.

**(Signed) Ronald L. Buch
Judge**

Dated: Washington, D.C.
January 3, 2018