

UNITED STATES TAX COURT
WASHINGTON, DC 20217

THE COCA-COLA COMPANY AND)	
SUBSIDIARIES,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 31183-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On February 20, 2018, respondent filed Respondent’s Motion in Limine to exclude allegedly irrelevant and inadmissible evidence. In this motion respondent seeks to exclude from the record of this case all material relating to a closing agreement that the parties executed in 1996. We briefly discussed the terms of this closing agreement in The Coca-Cola Company & Subsidiaries v. Commissioner, 149 T.C. No. 21 (Dec. 14, 2017).

Respondent contends that the 1996 closing agreement is irrelevant in determining whether his section 482 adjustments for tax years 2007-2009 are arbitrary, capricious, or unreasonable. In support of that proposition, respondent cites the well-established principle that each tax year stands on its own, so that the Commissioner in a later year may challenge a reporting position that he accepted or condoned in an earlier year. See, e.g., Knight-Ridder Newspapers, Inc. v. United States, 743 F.2d 781, 793 (11th Cir. 1984); Medtronic, Inc. v. Commissioner, T.C. Memo 2016-112, at *88.

Petitioner contends that the 1996 closing agreement has relevance to other arguments it intends to make. These arguments include the contention that certain payments made by petitioner’s foreign affiliates, while dividends in form, were treated under the closing agreement as satisfying the affiliates’ obligation to pay royalties. Petitioner accordingly contends that those dividends should be offset against any increased royalty obligation generated by the Commissioner’s section

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482 adjustments (in which case they would lose their character as dividends, with the resulting loss of deemed-paid foreign tax credits under section 902).

Respondent's contention that the 1996 closing agreement is irrelevant in determining the arm's-length character of the affiliates' payments to petitioner during 2007-2009 does not mean that the closing agreement should be excluded from evidence as irrelevant for all purposes of this case. Both parties are free to make whatever arguments they wish to make concerning the relevance of the 1996 closing agreement to the legal issues this case presents. The Court will evaluate those arguments on their merits, but we will do so after admitting the closing agreement and related documentation into evidence.

In consideration of the foregoing, it is

ORDERED that respondent's Motion in Limine is denied.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
February 23, 2018