

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MURFAM ENTERPRISES LLC,)		
WENDELL MURPHY, JR.,)		
TAX MATTERS PARTNER, ET AL.,)		
)		
Petitioners,)		
)		
v.)	Docket No. 8039-16,	14536-16,
)	14541-16.	
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		

ORDER

Trial in these three consolidated cases is set to begin August 6, 2018. On June 26, 2018, petitioners (collectively, “Murfam”) filed a motion for leave (ECF 44) to file amendments to the three petitions on two subjects--one a jurisdictional question raised by the Court, and the other a consequence of their experts’ opinion of the values at issue. With the motion, Murfam lodged in the consolidated cases a single “Amendment to Petitions” (ECF 45) that recites the additions that Murfam would make to its each of its three petitions. (Murfam did not lodge amended petitions that are conformed to reflect those proposed amendments.)

Murfam’s motion explains why it believes the Commissioner would not be prejudiced by the proposed amendments. The explanation is credible, and we see no obvious prejudice. However, the motion advises that “Respondent objects to the granting of this Motion.” We will therefore order the Commissioner to file a response to the motion for leave. If that response is indeed an objection, then it should explain why and how the Commissioner would be prejudiced by the amendments. Of course, “prejudice” for this purpose does not mean mere disadvantage but rather an unfair disadvantage arising from the delayed filing. A party alleging prejudice must be able to explain what it would have done differently heretofore if the amendment had been made earlier (or if the newly proposed contentions had been included in the original petition). Of course,

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consenting to the filing of an amended pleading is not a concession of the merits of that pleading.

(If we do grant the motion for leave, then we will not order the filing of the lodged “Amendment to Petitions” but will instead strike that document and order Murfam to file, in each of the three cases, a conformed amended petition for that case that reflects the amendments that Murfam requests leave to make.)

In view of the imminency of trial, we impose foreshortened deadlines in this order. If the schedule we impose works an injustice, then the disadvantaged party should immediately contact the chambers of the undersigned judge for purposes of scheduling a telephone conference among the parties and the Court. It is

ORDERED that as soon as possible, and in any event no later than July 3, 2018, the Commissioner shall file a response to the motion for leave. If that response is an objection, then it should explain why and how the Commissioner would be prejudiced by the amendment. The response should also explain, if the motion is granted, what cures there might be for the resulting prejudice. It is further

ORDERED that, if the Commissioner makes a filing indicating that he does not object to the motion for leave, then as soon as possible, and in any event no later than July 9, 2018, Murfam shall lodge, in each of the consolidated cases, a first amended petition that reflects the proposed amendments (and only the proposed amendments) that appear in the “Amendment to Petitions” lodged on June 26, 2018. It is further

ORDERED that, if the Court allows the filing of amended petitions in these cases (whether with the Commissioner’s consent or over the Commissioner’s objection), then the Commissioner shall file his answers to the amended petitions as soon as possible and in any event no later than a week after the amended petitions are filed.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
June 27, 2018