

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

PALMOLIVE BUILDING INVESTORS, LLC,)
DK PALMOLIVE BUILDING INVESTORS)
PARTICIPANTS, LLC, TAX MATTERS)
PARTNER,)
)
Petitioner,)
)
v.) Docket No. 23444-14.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

Now pending before the Court are a motion for summary judgment (Doc. 116) filed by petitioner (“Palmolive”) and a cross-motion for partial summary judgment (Doc. 129) filed by the Commissioner. We act on those motions as is set out below.

We issued an opinion in this case, 149 T.C. No. 18 (Oct. 10, 2017) (“Palmolive I”), holding that Palmolive is not entitled to a charitable contribution deduction for the contribution of a facade easement because of petitioner’s failure to comply with certain requirements of I.R.C. section 170. Still at issue in the case is Palmolive’s liability for penalties that the IRS has asserted. To resolve the penalty issues, this case is set for trial to commence on January 22, 2019, in Chicago, Illinois.

However, Palmolive filed a motion for summary judgment (Doc. 116) and supporting memorandum of law (Doc. 117) that seeks summary judgment on its contentions that--

1. there was reasonable cause and good faith, within the meaning of section 6664(c)(1), for the underpayment determined by the IRS and sustained in Palmolive I (see Doc. 117 at 14-31);
2. within the meaning of section 6662(d)(2)(B)(ii), the facts relevant to the deduction at issue were adequately disclosed in Palmolive's return, and there was a reasonable basis for Palmolive's reporting position (see Doc. 117 at 31-34);
3. this Court should overrule its holding in RERI Holdings I, LLC v. Commissioner, 149 T.C. 1 (2017), and should rule that, because the valuation dispute in this case was an alternative basis for the IRS's disallowance, and because Palmolive I sustained the disallowance without reaching the valuation issue, the underpayment is not "attributable to" a valuation misstatement, for purposes of section 6662(b)(3), (e) and (h)(1) (Doc. 117 at 34-44); and
4. the IRS failed to obtain written supervisory approval of the initial determination of the penalties at issue here, in compliance with section 6751(b) (Doc. 117 at 44-52).

The Court ordered (see Doc. 119) that the Commissioner file a response by November 16, 2018, and that Palmolive file a reply by December 7, 2018. The Commissioner filed a memorandum (Doc. 128) in opposition to Palmolive's motion as to all four issues listed above but also filed his own cross-motion for partial summary judgment as to issues 3 and 4, above (Doc. 129). By order of November 26, 2018 (Doc. 131), the Court ordered Palmolive to file, along with its reply due December 7, 2018, a response to the Commissioner's motion for partial summary judgment, and ordered the Commissioner to file a reply by December 21, 2018.

However, the parties initiated a telephone conference call with the Court to discuss proceedings in the case, given the imminency of the trial and the pendency of the motions. In that conference call held November 29, 2018, the undersigned judge explained his expectations as to how he is likely to rule on issues raised in the motions, and he suggested that Palmolive might wish to forego further filings on these motions and instead use its time to prepare for trial. Without withdrawing Palmolive's motion in any respect, its counsel stated that it would forego any further filing (and would instead rely on its supporting memorandum, Doc. 117) as to issues 2, 3, and 4 above, but that it would file a reply as to issue 1 by the

pending deadline of December 7, 2018. The undersigned Judge stated that he expects to grant the Commissioner's motion as to issue 4, but that his order or opinion on that issue might not be issued until soon before trial, and that the parties should prepare for trial on the assumption that issue 4 would not be a subject of trial.

Consistent with the foregoing, it is

ORDERED that by December 7, 2018, Palmolive may file a reply memorandum as to issue 1, but that the Court's orders issued November 16, 2018 (Doc. 119), and November 26, 2018 (Doc. 131), are otherwise vacated to the extent they direct the parties to file responses and replies regarding the cross-motions. It is further

ORDERED that Palmolive's motion for summary judgment is denied in part, as to issues 2 and 3, for the reasons stated in the Commissioner's memorandum (Doc. 128). It is further

ORDERED that the Commissioner's motion for partial summary judgment is granted in part, as to issue 3, for the reasons stated in the Commissioner's memorandum (Doc. 128). It is further

ORDERED that Palmolive's motion as to issue 1 and the parties' cross-motions as to issue 4 remain pending.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
November 30, 2018