

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

ANTHONY I. PROVITOLA & KATHLEEN A. PROVITOLA,)	
)	
Petitioners,)	CT
)	
v.)	Docket No. 12357-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On July 6, 2018, petitioners filed a Motion for Protective Order (motion for protective order) under Rule 103(a)(7).¹ Petitioners requested a protective order for “trade secrets or other information related to the development, production, financing, pricing, marketing, and sourcing of materials and components sought to be obtained by the [r]espondent through requests for production or interrogatories”. In that motion petitioners stated: “Respondent claims to be amenable to the entry of a protective order to be agreed upon and has requested the Petitioners to provide such for consideration.”

By order dated July 11, 2018, the Court directed respondent to file a response to petitioners’ motion for protective order. Respondent filed a response on July 20, 2018. Respondent asserted that petitioners’ statement was inaccurate and that respondent “never stated or indicated agreement to entry of a protective order”. The Court denied petitioners’ motion for protective order on August 31, 2018.

¹Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Background

On June 1, 2018, respondent filed a Motion to Compel Production of Documents and a Motion to Compel Responses to Interrogatories. On July 6, 2018, petitioners filed a response objecting to both motions to compel. On July 23, 2018, the Court granted respondent's Motion to Consolidate Docket Numbers and consolidated this case and docket No. 16168-17. The consolidated cases were calendared for trial at the Jacksonville, Florida, trial session on October 22, 2018, before another division of this Court.

Subsequent to the filing of the motion for protective order the parties filed on October 22, 2018, a First Stipulation of Facts, a First Supplemental Stipulation of Facts, and a Second Supplemental Stipulation of Facts (hereinafter sometimes referred to collectively as the stipulations of facts). Attached to the First Stipulation of Facts is a copy of (1) respondent's Interrogatories to Petitioners and petitioners' Response thereto, and (2) respondent's Request for Production of Documents and petitioners' Response thereto.

At the October 22, 2018, trial session petitioners made an oral motion to recuse the trial judge from these cases. By order dated November 8, 2018, the Court: (1) granted petitioners' oral motion to recuse, (2) denied as moot respondent's Motion to Compel Production of Documents, filed at docket No. 12357-16, and respondent's Motion to Compel Responses to Interrogatories, filed at docket No. 12357-16, and (3) vacated and set aside so much of the Court's September 10, 2018, order that denied petitioners' motion for protective order.

By order dated December 3, 2018, petitioners' motion for protective order was assigned to the undersigned for disposition.

The Court by order dated December 10, 2018, directed petitioners to file a First Supplement to Petitioners' Motion for Protective Order to inform the Court whether the filing of the stipulations of facts had any impact on petitioners' arguments in their motion for protective order. Petitioners filed a response with the Court on January 3, 2019, declining to file the ordered first supplement.

Petitioners have responded to respondent's interrogatories and request for production of documents and the parties have stipulated to such responses. Respondent's motions to compel have been denied as moot. Accordingly, the request for a protective order by petitioners is also moot.

Upon due consideration, it is

ORDERED that, petitioners' Motion for Protective Order is denied as moot.

(Signed) Diana L. Leyden
Special Trial Judge

Dated: Washington, D.C.
February 5, 2019