Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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ADRIAN D. SMITH & NANCY W. SMITH, ET AL.,	)	
Petitioners,	)	
v.	)	Docket Nos. 13382-17, 13385-17, 13387-17.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

These cases are calendared for a special trial session in Chicago, Illinois commencing May 4, 2020. On March 6, 2020, petitioners filed a Motion to Compel Responses to Interrogatories, requesting therein that the Court enter an order compelling respondent to answer--fully and immediately--Petitioner's [sic] First Set of Interrogatories, served on respondent on October 11, 2018 (petitioners' First Interrogatories).[1] See Rule 71.[2] By the foregoing Motion, petitioners seek sanctions in the event respondent fails to comply fully.

A review of petitioners' First Interrogatories reveals that it consists of 15 interrogatories that seek to clarify respondent's positions and contentions in these cases; namely, the factual or legal basis for respondent's determinations in the notices of deficiency that, for the taxable years at issue, petitioners are not entitled to the credit for increasing research activities under section 41. A review of petitioners' Motion, and the attachments thereto, further reveals that petitioners have sought, since June 18, 2018, to clarify the basis for the foregoing determinations--first by making a Branerton request[3] that included the same 15 contention interrogatories presently at

[1]A copy of petitioners' First Interrogatories is attached as Exhibit C to petitioners' Motion.

[2]All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code of 1986, as amended and in effect at all relevant times.

[3]See Branerton v. Commissioner, 61 T.C. 691 (1974).

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issue, and subsequently by issuing formal discovery (i.e., petitioners' First Interrogatories). Petitioners argue that respondent's answers in his response to petitioners' First Interrogatories[4] are "evasive and incomplete because they do not specifically identify which aspects of the four-part test Respondent asserts cannot be met by Petitioners, nor which exclusions Respondent is asserting are applicable in the instant matter." For the reasons that follow, we agree that respondent's answers to interrogatory Nos. 1 and 2, and 4 through 15, are insufficient.[5] Accordingly, we will direct respondent to answer, in good faith, the foregoing interrogatories separately and fully under oath within seven days.

With respect to discovery disputes involving the contentions of the parties, the Court has previously observed:

> Practice before this Court, as with Federal courts in general, is designed to make each party fully aware of the other party's case, including both the factual and legal foundations thereof. Proper trial preparation is time consuming and expensive, and therefore, it is important that well in advance of the trial each party know the issues which he must be prepared to try and those which are not to be tried.

Owens-Illinois, Inc. v. Commissioner, 76 T.C. 493, 495 (1981) (quoting Estate of Allensworth v. Commissioner, 66 T.C. 33, 39 (1976)).

In Estate of Allensworth v. Commissioner, 66 T.C. at 39, the Court required the Commissioner to advise the taxpayer of the contentions maintained by him, including his construction of State law, noting that the Commissioner's responses to the taxpayer's requested admissions "should serve the purposes of Rule 90 by narrowing the issues to be litigated."[6] See also Zaentz v. Commissioner, 73 T.C. 469, 478 (1979) ("The notice of deficiency serves to establish the issues which the petitioner must face in the case, and *Allensworth* makes clear that admissions and requests for

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[4]A copy of respondent's response, dated December 21, 2018, is attached as Exhibit D to petitioners' Motion.

[5]As discussed infra n.5, we find that respondent has provided a sufficient response to interrogatory No. 3.

[6]While Estate of Allensworth v. Commissioner concerned a request for admissions, the Court therein noted that, as here, "[i]n some cases, counsel may find it more suitable to submit interrogatories to the adverse party to ascertain a statement of his contentions." Id. at 40.

discovery may be used by a petitioner to seek clarification of the Commissioner's position or contentions."). In Owens-Illinois, Inc. v. Commissioner, 76 T.C. at 499, the Court required the taxpayer to advise the Commissioner of the contentions maintained by it, including its construction of foreign law, in order "to proceed with the stipulation process and to get to the merits of the case." In doing so, the Court stated that while a party "should not have to fully disclose its litigating position before trial", "a party cannot play games with the other party and refuse to disclose the contentions which he, at the time of the request, plans to present in the case." Id. at 498. See also Rule 70(b) ("If the information or response sought [in a discovery request] is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact."). In sum, the Court has been clear that "to prepare properly for a trial, it is necessary for each party to know the position of the other party, and discovery may be used to clarify that position." Zaentz v. Commissioner, 73 T.C. at 478.

As noted, petitioners' First Interrogatories consist of 15 interrogatories that seek to clarify the factual or legal basis for respondent's determinations in the notices of deficiency that, for the taxable years at issue, petitioners are not entitled to the credit for increasing research activities under section 41. A review of respondent's answers to petitioners' First Interrogatories reveals that respondent answered interrogatory No. 1 by directing petitioners to the notices of deficiency, and that he answered the remaining interrogatories (with the exception of interrogatory No. 3)[7] as follows: "Please refer to respondent's response to paragraph 1." A review of each of the notices of deficiency reveals that the full extent of respondent's explanation for his disallowance of the research credits at issue is as follows: "It has been determined that the partnership known as Adrian Smith + Gordon Gill Architecture, LLP's expenses do not qualify for the credit for increasing research activities as shown on the partnership's tax return Form 6765 for the tax years December 31, 2008 and December 31, 2010." In view of these vague notices of deficiency, we find that respondent's reliance on them is insufficient for purposes of answering petitioners' First Interrogatories. See Estate of Allensworth v. Commissioner, 66 T.C. at 34 ("Here, we have a vague notice of deficiency, that is, a notice of deficiency in which the Commissioner makes a determination that may be based on any one of a number of grounds but in which he fails to advise the taxpayer of the grounds on which he relies.").

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[7]Respondent answered interrogatory No. 3 with an unqualified "No", which is an appropriate response given the terms of the interrogatory. We will therefore deny so much of petitioners' Motion as it relates to interrogatory No. 3.

To the extent that the remainder of respondent's answer to interrogatory No. 1 (and by virtue of incorporation, to interrogatory Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15) might be construed as an objection thereto on the basis (1) that petitioners bear the burden of proving their entitlement to the research credits at issue, and/or (2) that the interrogatories seek to look behind the notice of deficiency, we overrule such an objection (or objections).

In view of the foregoing, it is

ORDERED that petitioners' Motion to Compel Responses to Interrogatories, filed March 6, 2020, is granted in part, in that respondent shall, on or before March 19, 2020, serve on counsel for petitioners full, complete, and responsive answers, made under oath and in good faith, to interrogatory Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of petitioners' First Interrogatories. It is further

ORDERED that so much of petitioners' Motion to Compel Responses to Interrogatories, filed March 6, 2020, is denied as it relates to interrogatory No. 3.

Respondent is hereby advised that, in the event he does not fully comply with the provisions of this Order, he may later be precluded from introducing evidence that would have been responsive to petitioners' interrogatories, or other sanctions may be imposed as the Court deems appropriate. See Rule 104(c).

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
March 12, 2020