

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SIEMER MILLING COMPANY,)	
)	
Petitioner,)	
)	
v.)	Docket No. 21655-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case was previously calendared for trial at a session of the Court beginning on October 30, 2017, in Indianapolis, Indiana. To streamline the trial, Siemer Miller provided to the Commissioner 343 separately numbered proposed stipulations. The Commissioner responded by faxing a redlined version back to Siemer Milling. That redlined version accepted 9 of the proposed stipulations, made edits to 9 others, and rejected without explanation 325 of the proposed stipulations.¹

Siemer Milling Co. filed a motion for order to show cause why proposed facts and evidence should not be accepted as established pursuant to Rule 91(f).² That motion did not “set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated”. See Rule 91(f)(1)(B). However, the motion recited that the documents underlying the proposed stipulations had been in the Commissioner’s possession for over three years. See Rule 91(f)(1)(D). The Court granted that motion and ordered the Commissioner to show cause why the facts and evidence set forth in the proposed stipulations should not be deemed admitted.

The Commissioner responded to that motion by noting that no documents, papers, or other exhibits were annexed to the motion. See Rule 91(f)(1)(B). The

¹ All of the accepted or edited stipulations were within the first 31 proposed stipulations; the Commissioner rejected, wholesale, the final 312 proposed stipulations.

² All rule references are to references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

Commissioner's response to the Court's Order did not fulfil the requirements of Rule 91(f)(2), which include:

The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose.

The Court held a conference call to discuss the motion with the parties and followed that call with a hearing on November 2, 2017.

The stipulation processes is "the bedrock of Tax Court practice" and is necessary to ensure "expeditious trial of cases as well as for settlement purposes."³ The stipulation process is governed by Rule 91. Under Rule 91(a)(1) parties are "required [to stipulate to] * * * all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute." Parties were reminded of their duty to stipulate in the Court's pretrial order:

Stipulation. It is ORDERED that all facts shall be stipulated (agreed upon in writing) to the maximum extent possible. * * * If a complete stipulation of facts is not ready for submission at the start of the trial or when otherwise ordered by the Court, and if the Court determines that this is due to lack of cooperation by either party, the Court may order sanctions against the uncooperative party.

While it appears that the Commissioner has been uncooperative as to this series of proposed stipulations, it cannot be said that Siemer Milling is without fault. While it is unclear whether there is sufficient time for the parties to have a "do-over", we will permit Siemer Milling to resubmit its proposed stipulations with an accelerated timeline. The process will work as follows:

³ Branerton Corp. v. Commissioner, 61 T.C. 691, 692 (1974).

Siemer Milling, if it chooses, may resubmit its proposed stipulations to the Commissioner. If it resubmits its proposed stipulations, each proposed stipulation shall refer to the source of the underlying information (at a minimum, directing the Commissioner to the specific page). If Siemer Milling serves a new set of proposed stipulations on the Commissioner, the Commissioner shall respond separately as to each proposed stipulation. For any proposed stipulation that the Commissioner does not accept without alteration, the Commissioner must set forth a specific basis for not accepting the proposed stipulation. While evidentiary objections may be noted, they will not be considered a sufficient basis for a failure to stipulate. Accordingly, it is

ORDERED that the Order to show cause dated September 19, 2017 is discharged. It is further

ORDERED that Siemer Milling may deliver to the Commissioner by 2:00 pm November 13, 2017, the proposed stipulation of facts annotated as described above. It is further

ORDERED that, if Siemer Milling timely delivers to the Commissioner the proposed stipulation described above, the Commissioner, by 2:00 pm November 20, 2017, shall deliver to Siemer Milling a response as described above. It is further

ORDERED that each party shall mail a courtesy copy to the Chambers of the undersigned judge. It is further

ORDERED that Siemer Milling may renew its motion to compel stipulation by November 23, 2017. If the Commissioner does not respond within the period specified above, or if the response is incomplete, evasive, or not fairly directed to the proposed stipulations, that matters may be deemed stipulated for purposes of the pending case, and an Order entered accordingly, pursuant to Rule 91(f)(3).

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
November 3, 2017