

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

MARTIN LEWIS & TRINA LEWIS,)		
)		
Petitioner(s),)		
)		
v.)	Docket Nos. 24373-18,	13826-19.
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		
)		
)		

ORDER

Pending before the Court is petitioners’ Motion for Protective Order Pursuant To Rule 103, filed February 2, 2020.¹ The Court directed respondent to file a response. On March 16, 2020, respondent filed an Objection To Motion for Protective Order.

Any references to the description of entities or the relationships and factual background of entities are based on the parties’ assertions. Any findings herein are based on those assertions and limited to the pending motion.

The deficiencies determined by respondent in these two docketed cases relate to disallowed claimed captive insurance premiums paid to Cedar Insurance, Ltd. (Cedar Insurance) in 2014 and 2015. Cedar Insurance is a micro-captive insurance company domiciled in Nevis. It was formed and managed by Retained Risk Manager, LLC. The payments were deducted by petitioners as a flow through from a Subchapter S Corporation, Lewis, Kaufman, Reid, Stukey, Gattis, & Co, PC (LKRSG). LKRSG is a CPA firm in which Mr. Lewis was the managing shareholder.

¹All Rule references are to the Tax Court’s Rules of Practice and Procedure, and all section references are to the Internal Revenue Code, as amended, for the years in issue. Although petitioners titled their motion as a “Motion For Protective Order and Request for Sanctions Pursuant To I.R.C. 6673(a)(2)”, the motion as filed is an improper joinder of motions. See Rule 54(b) (“Unless otherwise permitted by the Court, motions shall be separately stated and not joined together”).

In their motion for protective order, petitioners request the Court to enter a protective order prohibiting respondent from engaging in extra-judicial discovery or otherwise circumventing this Court's Rules of Practice and Procedure. Petitioners explain that after the petitions in these cases were filed, respondent's Revenue Agent (RA) served a summons on petitioner Martin Lewis. That summons requests Mr. Lewis to appear before the RA "[i]n the matter of the I.R.C. § 6700 investigation of Retained Risk Manager, LLC" for calendar years 2012 through 2018.

In support of their motion for protective order, petitioners point to Universal Manufacturing Co. v. Commissioner, 93 T.C. 589 (1989).

In his objection respondent asserts that the Court no longer follows Universal Manufacturing, but rather the controlling case is Ash v. Commissioner, 96 T.C. 459 (1991). In Ash v. Commissioner, 96 T.C. at 471, the Court stated

Where litigation in this Court has commenced, and an administrative summons is issued not with regard to both the same taxpayer and taxable year (for instance where the summons concerns another taxpayer or a different taxable year), normally we will not exercise our inherent power. We will exercise that power, however, when petitioner can show lack of an independent and sufficient reason for the summons.

Respondent argues that petitioners failed to demonstrate that the examination lacks an independent and sufficient reason apart from this litigation. See id. In support of his position, respondent attached to his Objection the declaration of RA Roberta James, in which RA James explains that the information sought from Mr. Lewis is unrelated to the above-docketed cases. RA James also explained that she has not communicated directly or indirectly with respondent's counsel of record in this case nor will he attend the summons interview.

Rule 103 allows this Court to issue orders to protect persons from annoyance, embarrassment, oppression, or undue burden or expense resulting from the use of this Court's discovery procedures. Ash v. Commissioner, 96 T.C. at 469-470. This Court also has inherent authority to prescribe an applicable rule of procedure when no such rule exists. Rule 1(b); Ash v. Commissioner, 96 T.C. at 470.

From a review of the documents in this current record the Court is satisfied that respondent has shown that the summons was issued for sufficient reason independent of the litigation. We appreciate that there will be some common issues of fact and law. We note that respondent represented that the examination team is not developing facts or seeking information for use in connection with the above-docketed cases. We will hold respondent to his representation. In this connection, if circumstances change or petitioners come forward with additional evidence of improper purpose the Court may consider this matter anew. The Court will deny petitioners' motion without prejudice.

In view of the foregoing, it is

ORDERED that petitioners' Motion for Protective Order Pursuant To Rule 103, filed February 2, 2020, is denied without prejudice to renew consistent with the Courts holding herein.

(Signed) Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
April 14, 2020