

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

GEORGE E. JOSEPH,	)	
	)	<b>CZ</b>
Petitioner(s),	)	
	)	
v.	)	Docket No. 27759-15.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This case involves substantial deficiencies in petitioner's Federal income tax for his 2011, 2012, and 2013 taxable years. Respondent issued a statutory notice of deficiency to petitioner on July 31, 2015. We filed the petition, dated October 26, 2015, on November 3, 2015. It appears that some time thereafter respondent's counsel referred the matter to IRS Appeals Officer Nancy Driver for consideration. Apparently, Ms. Driver came to believe that some of the adjustments giving rise to deficiencies in tax determined by respondent were less than respondent had determined (taking into account certain adjustments previously conceded by respondent). It appears, however, that, on the basis of Ms. Driver's analysis, the parties have not entered into a settlement agreement or compromise of petitioner's liability. Petitioner wishes to call Ms. Driver as a witness. Respondent objects, relying in substantial part on Federal Rules of Evidence 408, which makes inadmissible to prove or to disprove the validity or amount of a disputed claim evidence of conduct or statements made during compromise negotiations. By order dated April 10, 2018 (order), we ordered petitioner to respond to respondent's oral motion to exclude the testimony of Ms. Driver (motion). Petitioner on April 11, 2018, responded with a document entitled "Petitioner's motion in limine", which we will recharacterize as petitioner's "Response to Order dated 4/10/18".

The nub of petitioner's response is that "Ms. Driver's efforts demonstrated a true understanding of the issues presented in the taxpayer's case" and, because of that, "Petitioner respectfully requests that the Court consider Ms. Driver's efforts as the starting point for purposes of this audit." In the order, we required petitioner in

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his response to specify the facts that petitioner relies on to show error and to identify what knowledge Ms. Driver possesses of each of those facts. Petitioner failed to do so. We therefore must conclude that Ms. Driver has no admissible testimony with respect to those facts. If petitioner wishes her to testify as to issues of law, that would be inappropriate because that is the province of the Court. Moreover, we cannot escape the conclusion that Ms. Driver, an employee of respondent's, was brought into this matter to consider petitioner's disagreements with the adjustments giving rise to the deficiencies in tax and to try and reach a resolution satisfactory to both the taxpayer and respondent that would eliminate the need for, or at least reduce the issues for, trial. And while Ms. Driver may have formed opinions as to certain of the adjustments made by respondent before the statutory notice was issued, her opinions have not translated into an accepted settlement or compromise. We do not know, and will not inquire, why that is so. Petitioner argues: "From a policy standpoint, it seems illogical to simply ignore the progress that was made in determining Petitioner's true tax liability and revert back to what is admittedly a seriously flawed initial audit." Petitioner's view of policy may differ from respondent's. The Commissioner is the party here, not Ms. Driver, and, for all we know, his counsel may have thought Mr. Driver much too generous or simply wrong. An attempt at settlement or compromise was attempted, and, apparently, it failed. We think that respondent correctly moves to exclude Ms. Driver as a witness on the authority of Fed. R. Evid. 408 and because her testimony would not be relevant. We will grant the motion.

It is, therefore,

ORDERED that the Clerk of the Court shall recharacterize petitioner's April 11, 2018, submission as petitioner's Response to Order dated 4/10/18". It is further

ORDERED that respondent's oral motion to exclude the testimony of Ms. Driver is granted.

**(Signed) James S. Halpern  
Judge**

Dated: Washington, D.C.  
April 13, 2018