

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TRIBUNE MEDIA COMPANY F.K.A.)	
TRIBUNE COMPANY & AFFILIATES, ET)	
AL.,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 20940-16, 20941-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

These consolidated cases are tentatively set for a special trial session on October 28, 2019, in Washington, D.C.

On July 23, 2018, Tribune Media Company and the tax matters partner of Chicago Baseball Holdings, LLC (collectively, Tribune) filed a motion to compel the production of documents. On September 12, 2018, we issued an order in which we addressed the proper scope of discovery, ordered the Commissioner to produce further documents, and ordered the Commissioner to file a status report with an updated privilege log. The Order granted in part, denied in part, and deferred the remainder of Tribune’s motion to compel until the Commissioner produced an updated privilege log. We ordered an updated privilege log because, having clarified the proper scope of discovery, it was possible that many of the documents previously listed as privileged would be rendered nonresponsive or irrelevant.

The Commissioner complied with the Court’s September 12, 2018, Order. He produced documents, responded to inquiries contained in the underlying Branerton requests, and provided an updated privilege log in conformity with the Court’s Order. Accepting the representations in the Commissioner’s updated privilege log as accurate, the log adequately supports his claims of privilege. The entries on the updated log identify for each document the author and recipient(s),

the subject matter, and sufficient facts establishing the elements of a privilege claim.¹

On September 26, 2018, Tribune filed a motion for leave to file status report, which the Court has granted. In its status report Tribune argues that the Commissioner has not complied with the Court's September 12, 2018, Order.

Tribune's status report re-raises issues already decided in our September 12, 2018, Order. Specifically, Tribune again looks for documents and information underlying recommendations or determinations to assert a penalty. But this is a de novo proceeding. Our opinion in Graev v. Commissioner, 149 T.C. No. 23 (Dec. 20, 2017), makes the fact of supervisory approval relevant, but that opinion does not change the longstanding general proposition that we do not look behind a notice of deficiency. As we stated in Raifman v. Commissioner, T.C. Memo. 2018-101, "it would be imprudent for this Court to now begin examining the propriety of the Commissioner's administrative policy or procedure underlying his penalty determinations." Tribune's status report is another argument for looking behind the Commissioner's penalty determinations – an argument we've already addressed. Such information is not relevant, and Tribune's request for such information was denied in our September 12, 2018, Order.

Because the Commissioner has produced the relevant documents and provided an updated privilege log in conformity with the Court's September 12, 2018, Order, it is

ORDERED that Tribune's motion to compel production of documents filed June 23, 2018, is denied in all remaining respects.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
September 27, 2018

¹See Pacific Mgmt. Grp. v. Commissioner, T.C. Memo. 2015-97.