

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PALMOLIVE BUILDING INVESTORS, LLC,)	
DK PALMOLIVE BUILDING INVESTORS)	
PARTICIPANTS, LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 23444-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

We will order the parties to file supplemental pretrial memoranda to clarify certain facts relevant to the remaining issues in this case and to give answers to questions that may facilitate our own preparation for the upcoming trial that will begin on January 22, 2019. This order assumes familiarity with our opinion previously issued in this case, Palmolive Bldg. Inv’rs, LLC v. Commissioner, 149 T.C. __ (Oct. 10, 2017) (“Palmolive I”), and with our orders of December 14 and 17, 2018 (Docs. 144, 147).

Background

The Commissioner’s description of the structure

In a motion to compel, the Commissioner summarized the ownership structure and subsequent transactions between related entities, which preceded Palmolive’s donation of the facade conservation easement. (See Doc. 127 at 7-11.) The Commissioner’s pretrial memorandum set forth a slightly more detailed description of the initial acquisition (Doc. 146 at 10-11) and subsequent restructuring (id. at 13-16). We summarize that description thus:

The building was acquired in May 2001 for \$58.5 million by Palmolive and the National Electrical Benefits Fund (“NEBF”), a pension fund. Palmolive and NEBF created entities to hold various portions of the building. The Commissioner describes the initial ownership structure of the building as follows: (1) Palmolive owned (via its membership interests in three entities) 15% of floors 1-14 and 100% of floors 15-37; and (2) the National Electrical Benefits Fund (“NEBF”) owned (via its membership interests in two entities) 85% of floors 1-14 and no equity interest in floors 15-37. (See Doc. 146 at 10-12.)

In 2003 Palmolive and NEBF engaged in a series of transactions which restructured the building’s financing and also changed the proportion of the parties’ ownership interests in the building. In the course of those transactions, the property rights to 100% of the facade of the building were conveyed (from the entities that had been holding the ownership of the building’s floors) to a newly created entity that was wholly owned by Palmolive, i.e., Palmolive Building Facade LLC (“Facade LLC”). Palmolive also acquired NEBF’s 85% interest in floors 5-14. During the course of these transactions, Palmolive paid NEBF \$6.75 million. (See Doc. 146 at 13-15.)

At the conclusion of these 2003 transactions, Palmolive owned: (1) 15% of floors 1-4 excluding the facade, via Palmolive Building Retail, LLC (“Retail LLC”); (2) 100% of floors 5-37 excluding the facade, via Palmolive Tower Condominiums, LLC (“Tower LLC”); and (3) 100% of the facade of the building, via Facade LLC. It appears that the Commissioner contends that NEBF retained an 85% ownership interest in floors 1-4, excluding the facade.

Palmolive’s response

In its response (Doc. 136) to the Commissioner’s motion to compel, Palmolive did not correct the Commissioner’s narrative concerning the initial and final ownership structure or the intervening transactions. Palmolive’s pretrial memorandum (Doc. 145) does not comment on the initial ownership structure or what percentage of the various portions of the building were owned by Palmolive and NEBF in 2001. However, Palmolive’s memorandum does discuss the 2003 restructuring, and it appears that Palmolive generally agrees with the Commissioner that Retail LLC, Tower LLC, and Facade LLC owned the Palmolive building after the 2003 restructuring, and it appears that Palmolive agrees generally with the Commissioner about what portions of the building those respective entities owned. However, Palmolive is not explicit about Palmolive’s

and NEBF's respective ownership interests in those three entities after the 2003 restructuring.

Additional comment and clarification

If the Commissioner's descriptions are correct, then it appears that, by means of the restructuring transactions in 2003, Palmolive (1) acquired (a) NEBF's 85% of the facade of floors 1-14 and (b) NEBF's 85% of the non-facade rights in floors 5-14, and (2) paid NEBF \$6.75 million during the restructuring. We would benefit from the parties confirming or correcting that conclusion.

In this regard, Palmolive makes two statements as to NEBF's equity ownership of the building to which we invite clarification. Palmolive states that "[a]s a result of the 2003 restructuring and refinancing, NEBF had no equity interest in the portion of the Building that was being converted to condominiums" and then subsequently states, "[a]s a result, after the 2003 restructuring and refinancing, NEBF had no equity interest in the Building." (Doc. 145 at 9 (emphasis added).) We would benefit from knowing whether Palmolive contends that after the 2003 restructuring: (1) NEBF did not have (directly or indirectly) an equity interest in any portion of the building; or (2) NEBF did not have an equity interest in floors 5-37 (but did retain, directly or indirectly, an ownership interest in floors 1-4).

The facts stated or assumed in this order are not findings of fact for purposes of deciding this case, but are tentative hypotheses as to which we invite comments and corrections by counsel for the parties.

To give effect to the foregoing, it is

ORDERED that, no later than January 16, 2019, each party shall file a supplemental pretrial memoranda that responds to the foregoing, corrects any errors expressed or assumed in this order, and briefly describes the party's contentions as to the respective interests of Palmolive and NEBF in the ownership structure of the Palmolive building (both as to the facade and as to the non-facade

property rights) as initially owned in 2001, as altered in the 2003 restructuring transactions, and as held in the resulting ownership structure after that restructuring.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
December 20, 2018