

UNITED STATES TAX COURT  
 WASHINGTON, DC 20217

EATON CORPORATION AND	)	
SUBSIDIARIES,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 28040-14.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	

**ORDER**

On April 10, 2019, respondent filed a motion for leave to file first amendment to answer, and the amendment to answer was lodged with the Court. On April 11, 2019, the Court issued an order requesting petitioner to file a response to the above-referenced motion by May 2, 2019. On April 26, 2019, petitioner filed a response to motion for leave to file first amendment to answer. Petitioner objects to respondent’s motion. On May 8, 2019, respondent filed a motion for leave to file reply to response to motion for leave to file first amendment to answer. On May 8, 2019, the Court granted respondent’s motion for leave to file reply to response to motion for leave to file first amendment to answer.

This case is not currently calendared for trial. Both petitioner and respondent are awaiting a decision in Eaton Corp. v. Commissioner, T.C. Memo. 2017-147, before requesting a trial date in the present case.

On October 17, 2017, the parties each respectively filed cross-motions for partial summary judgment on the issue of whether the earnings and profits (E&P) of the upper-tier controlled foreign corporation (CFC) partners of Eaton

**SERVED May 10 2019**

Worldwide LLC (EW LLC), a domestic partnership, must be increased as a result of the partnership's section 951(a) income inclusions. This Court, by opinion, Eaton Corp. v. Commissioner, 152 T.C. \_\_ (Feb. 25, 2019), and order, dated March 12, 2019, denied petitioner's motion and granted respondent's motion. We held that petitioner's upper-tier CFC partners must include their distributive shares of EW LLC's income, including their distributive shares of EW LLC's section 951(a) income inclusions, in their gross income and their E&P. We redetermined petitioner's income as a result of income inclusions under sections 951(a)(1) and 956 in amounts previously stipulated to by the parties.

Rule 41(a)<sup>1</sup>, as applicable to this stage of the case, provides that "a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be given freely when justice so requires." Whether leave to amend answer will be granted is a question falling within the sound discretion of the Court. Estate of Quick v. Commissioner, 110 T.C. 172, 178 (1998). An important factor in deciding whether leave will be granted is prejudice to the opposing party. Id. at 178-180. Prejudice can occur if the opposing party was required to engage in substantial new preparation at a late stage in the proceedings, necessitating added time and expense.

Respondent's requested first amendment to answer seeks to raise a new issue which would adjust petitioner's income under sections 951 and 956. This new issue involves petitioner's upper-tier CFCs' loans to one of its U.S. corporations, AT Holdings Corporation (Loans). Respondent's position is that the Loans are "obligations of a United States person" and, as such, are U.S. property under section 956(c)(1)(C), supporting an increased income inclusion to petitioner under section 951(a)(1)(B). In support of respondent's motion, respondent states that because the increased income to petitioner would result in redetermined adjustments for each taxable year in an amount less than the amount determined in the notice of deficiency, the requested first amendment to answer does not result in an increased deficiency for any year.

Petitioner contends that respondent's motion would cause petitioner to suffer substantial delay and prejudice. Petitioner further contends that respondent previously had ample opportunity to identify and characterize the Loans as U.S.

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<sup>1</sup>All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the years in issue.

property attributable to the upper-tier CFC partners, and that respondent's mischaracterization results from a lack of due diligence.

Given the liberality of the above-described standard, the circumstances of this proceeding do not meet the requisite prejudice or delay to justify denial of respondent's motion. The requested first amendment to answer will not require substantial new preparation at a late stage in the proceedings, nor will it "surprise and/or unfairly disadvantage" petitioner. See Estate of Quick v. Commissioner, 110 T.C. at 180.

To reflect the foregoing, it is hereby

ORDERED that respondent's motion for leave to file first amendment to answer filed April 10, 2019, is granted, and the Clerk of the Court shall file respondent's first amendment to answer, lodged April 10, 2019, as of the date of this order.

**(Signed) Kathleen Kerrigan**  
**Judge**

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Dated: Washington, D.C.  
May 10, 2019