

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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

ORDER

Trial in this case is set to commence December 16, 2019. Now before the Court are the Commissioner’s two motions in limine to exclude from evidence at trial the expert testimony and reports of Randall Dawson (Doc. 177) and Richard Friedman (Doc. 178).

We will deny without prejudice the Commissioner’s motion regarding Mr. Dawson’s report. The Commissioner’s position is that the report fails to provide sufficient reasoning to support its conclusions and that the report should either be excluded in its entirety or that Mr. Dawson’s direct testimony be limited “so he cannot use that testimony to expand on his report’s limited explanations to cure its obvious deficiencies”. See Doc. 177, p. 2. At this stage, we cannot yet conclude that Mr. Dawson has “disregard[ed] relevant facts * * * or exaggerate[d] value[s] to incredible levels” such that we should reject his report. See Doc. 177, p. 5 (citing Boltar, L.L.C. v. Commissioner, 136 T.C. 326, 335 (2011)). Instead, the Commissioner will have the opportunity at trial to cross-examine Mr. Dawson’s testimony and present contrary evidence (see Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993)) to expose any deficiencies in his determinations.

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We will also deny without prejudice the Commissioner's motion regarding Mr. Friedman's report. The Commissioner's position is: (1) that the report provides legal conclusions and analysis and should be excluded in its entirety (or in the alternative that the Court should redact such conclusions or analysis (Doc. 184, p. 2)); and (2) that Part II of the report should be characterized not as rebuttal but as an opening report because it addresses new matters rather than rebutting specific items raised in the Commissioner's experts reports, and thus, the report should be excluded as untimely with respect to schedule (agreed on by the parties and ordered by the Court) for submitting such reports. We will not in this instance address in limine the Commissioner's concerns regarding legal testimony. With regard to arguably new items raised in Part II of the report, we think it a sufficient cure for any prejudice to now provide the Commissioner the opportunity to submit surrebuttal no later than December 2, 2019. Accordingly, it is

ORDERED that the Commissioner's motion in limine (Doc. 177) to exclude the testimony and report of petitioner's expert Randall Dawson is denied without prejudice. It is further

ORDERED that the Commissioner's motion in limine (Doc. 178) to exclude the testimony and report of petitioner's expert Richard F. Friedman is denied without prejudice. It is further

ORDERED that the Commissioner may, if he wishes, submit no later than December 2, 2019, a surrebuttal report addressing arguably new matters raised in Part II of the report of petitioner's expert Richard F. Friedman.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
October 28, 2019