



United States Tax Court

Washington, DC 20217

Peter Brancovich Turek

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Docket No. 15447-19

ORDER

On October 29, 2020, respondent filed a Motion for Leave to File Out of Time First Amendment to Answer (motion for leave) and lodged respondent's First Amendment to Answer (amendment to answer). By Order dated June 24, 2021, the Court granted respondent's motion for leave and ordered that the Clerk of the Court should file the amendment to answer. In that Order, the Court also required the parties to, on or before October 22, 2021, file joint or separate status reports advising the Court about any progress in the discovery process and the parties' readiness for trial. On October 22, 2021, each of the parties filed a separate status report, indicating that the informal discovery process was ongoing and that the case was not yet ready for trial.

The Court may calendar this case for a remote trial session commencing sometime after June 1, 2022. The Court will consult with the parties in late Spring of 2022 and issue a proposed trial date approximately 60 days prior to trial. A complete pretrial schedule is set forth herein and shall govern the pretrial preparation for this case. A separate Order will be issued in the future setting this matter for trial.

Upon due consideration and for cause, it is

ORDERED that the following procedures and schedule shall govern the pretrial preparation of this case:

1. Discovery

(a) The parties shall attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures (formal discovery) provided in this Court's Rules of Practice and Procedure. This Court expects the parties to minimize discovery disputes whenever possible. No motion to compel discovery pursuant to Tax Court Rule 104 shall be filed unless and until the parties have met in an effort to resolve the dispute and, if the dispute remains unresolved following such meeting, have had a conference call with the Court to discuss the dispute.

(b) Each party shall exchange with the other party a written statement that identifies by name any potential witness to be called as part of the party's case-in-chief, and sets contact information for such witness, to be due on or before **March 4, 2022**.

(c) All interrogatories (Rule 71), requests for production of documents (Rule 72), and requests for admissions (Rule 90) shall be served on or before a date that will enable any required response to be due on or before **March 11, 2022**.

(d) All other motions regarding fact discovery, including (i) motions to compel responses to interrogatories and requests for production and (ii) motions to review the sufficiency of the answers or objections to a request for admissions to be due on or before **April 1, 2022**.

(e) On or before **April 1, 2022**, the parties shall serve notices of deposition of party and non-party fact witnesses, if any. All depositions of fact witnesses shall be completed no later than **April 22, 2022**, unless a motion to compel answers to specific questions has been filed by that date.

Served 11/29/21

2. Summary Judgment. Any and all motions for summary judgment, partial summary judgment, or any other dispositive motions shall be filed and served on the opposing party on or before **March 25, 2022**.

3. Stipulations. The parties shall comply with Rule 91 except as modified by this Order and shall stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Although the Court expects the stipulations to be comprehensive, the parties may conduct the stipulation process in a manner reasonably calculated to result in one or more stipulations of fact that together shall constitute a comprehensive stipulation of facts for purposes of this case. One or more executed stipulation of facts, together with exhibits, shall be submitted directly to the undersigned on or before **May 6, 2022**. This paragraph does not preclude the subsequent filing of supplemental stipulations of facts. Any motion to compel stipulations pursuant to Rule 91(f) shall be filed on or before **April 8, 2022**.

4. Expert Witnesses. The parties shall abide by the procedures and deadlines regarding expert witnesses set forth herein. The parties are reminded that any expert witness testimony is admissible only to the extent that it assists the Court in resolving one or more matters at issue in this case. The Court will consider excluding an expert witness' testimony, including but not limited to the expert's report, if the testimony is not helpful, or is so argumentative and adversarial that the expert witness appears to be an advocate for the party offering the witness. An expert witness' testimony may be excluded for failure to comply with the provisions of Rule 143(g) (as modified by this Order) and for failure to comply with this Order.

The following procedures and deadlines apply to expert witnesses:

(a) On or before **March 4, 2022**, each party shall exchange with the other party a written statement that identifies by name any potential expert witness to be called as part of the party's case-in-chief, and sets forth the expert witness' qualifications and a brief summary of the expected testimony.

(b) On or before **April 1, 2022**, the parties shall exchange and submit directly to the undersigned all expert witness reports, prepared in accordance with Rule 143(g), which the parties intend to introduce as part of their cases-in-chief. A party is prohibited from calling any expert witness as part of its case-in-chief if that party has not exchanged and submitted an expert witness report in accordance with this subparagraph.

(c) On or before **April 29, 2022**, the parties shall provide a written statement that identifies by name any potential expert witness to be called as a rebuttal expert witness and sets forth the rebuttal expert witness' qualifications and a brief summary of the expected testimony. A party's rebuttal expert witness need not be the same expert witness called to testify in that party's case-in-chief.

(d) On or before **May 20, 2022**, the parties shall exchange and submit directly to the undersigned all rebuttal expert witness reports. No party shall submit or exchange a rebuttal expert witness report for presentation at trial, unless that party previously exchanged an initial expert report in accordance with subparagraph (b) above. The parties shall also (1) exchange all documents and materials (other than marked up drafts of expert reports, comments on such drafts or other matters or communications protected from discovery by Fed. R. Civ. P. 26(b)) relied on by each expert to prepare his/her rebuttal report that have not already been exchanged, or that are not otherwise available commercially to the other party or are in the public domain, and (2) identify in writing and exchange all documents provided by a party or counsel to each rebuttal expert witness (other than marked up drafts of expert reports, comments on such drafts or other matters or communications protected from discovery by Fed. R. Civ. P. 26(b)) that have not previously been exchanged.

5. Pretrial Memoranda. On or before **May 20, 2022**, each party shall submit to the undersigned and serve on the other party a pretrial memorandum setting forth the issues to be tried, a summary of the pertinent facts and the applicable law, and the evidentiary issues, if any, expected to arise at trial, as well as any other significant problem on which a ruling may be required. The pretrial memoranda shall also identify all witnesses expected to testify at trial, including expert witnesses, and shall set forth a summary of each witness anticipated testimony. Witnesses who are not identified will not be permitted to testify at the trial without leave of Court for good cause shown.

6. Document Identification and Exchange. On or before **May 20, 2022**, all documents and materials to be offered as evidence at trial (except written materials to be used solely for impeachment) that are not stipulated shall be identified in writing and exchanged by the parties. Any written materials not so identified and exchanged will not be admitted into evidence unless otherwise agreed to by the parties or allowed by the Court for good cause shown.

7. Exchange of Demonstrative Materials. On or before **May 20, 2022**, the parties shall exchange with each other and shall provide to the undersigned any charts, diagrams or other demonstrative materials prepared for purposes of the trial that they intend to use in connection with their respective cases-in-chief. Nothing in this paragraph, however, shall preclude either party from presenting such additional or revised charts, diagrams or other demonstrative material as the circumstances at trial may warrant as long as the party offering the material has provided a copy of the material to the other party and to the Court at least 24 hours before the use of such material at trial.

8. Exchange of Business Record Declarations. On or before **May 20, 2022**, the parties shall exchange with each other and shall provide to the undersigned a written statement that identifies by name any declarants with regard to business record declarations. On or before **May 20, 2022**, the parties shall exchange with each other and shall provide to the undersigned any business record declarations.

9. Motions in Limine. On or before **May 20, 2022**, the parties shall file any pretrial motions regarding evidentiary issues or witness issues, including motions in limine. On or before **May 27, 2022**, the parties shall file responses to any pretrial motions regarding evidentiary issues or witness issues, including motions in limine.

(Signed) Peter J. Panuthos
Special Trial Judge