New Case Illustrates Permanent Effect of Concessions Made During Tax Disputes

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I. Introduction

In this modern world filled with impersonal electronic communications, people often forget that what you say really matters. Stated another way, words can have serious consequences, now and later. This is particularly true in the context of tax disputes with the Internal Revenue Service ("IRS"). Everything that a taxpayer says, writes, or supplies to the IRS at any point during a battle might be employed against him. The IRS can have its own actions and words used to its detriment, too. This occurs, for instance, when the IRS makes an admission, stipulation, or some other type of concession in connection with Tax Court litigation that is contrary to the relevant law but helpful to a taxpayer's case.

This article explains data-gathering techniques utilized by the IRS during audits, legal presumptions associated with Notices of Deficiency, initial pleadings filed by taxpayers and the IRS with the Tax Court, pre-trial discovery tools, effect of items obtained through the discovery process, and the types of legal briefs submitted to the Tax Court. Then, using a recent Tax Court case, *Estate of DeMuth v. Commissioner*, as a general admonition, this article explains what occurs when a party concedes a key point before trial, and such point turns out to be wrong.[1]

II. Data Gathering During an Audit

Taxpayers normally must file complete, accurate, and timely returns with the IRS.[2] Taxpayers also must retain records in case the IRS decides to audit them.[3] Indeed, the regulations dictate that taxpayers "shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters" shown on any return.[4] With respect to accessibility and duration, taxpayers must ensure that their substantiation is kept "at all times available for

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inspection" by the IRS and must retain it for as long as it "may become material in the administration of any internal revenue law."[5]

The IRS enjoys broad powers in doing its job. For purposes of auditing returns, preparing returns when taxpayers fail to do so on their own, determining liabilities of taxpayers, and collecting them, the IRS can do several things. For starters, the IRS can examine any books, records, or other data that might be relevant or material. Its preferred method for carrying out such examinations is issuing Information Document Requests ("IDRs") to taxpayers.[6]

If the IRS is dissatisfied with responses to IDRs, it has the ability to send Summonses to taxpayers. The IRS is not required to stop there, though. It can also direct Summonses to any person required to perform tax-related acts; any person in possession, custody, or control of pertinent data; or "any other person that the [IRS] may deem proper."[7] The power to gather data by Summonses is broad, and the IRS counts on several enforcement mechanisms when it faces uncooperative taxpayers or other persons. The IRS, for example, can seek a contempt order from the appropriate District Court, ask the District Court to judicially enforce the Summons, or start a criminal proceeding.[8] For these reasons, Summonses have been labeled the "principal coercive mechanism" available to the IRS, and constitute a tacit threat behind all IDRs, requests for interviews, and other data-gathering mechanisms during an audit.[9]

The IRS might start with a more casual approach when it comes to seeking data from persons *other than* taxpayers; these are known as third-party contacts.[10] The IRS often begins with a letter asking, but not explicitly demanding, certain data. If this softer approach does not render the desired results, the IRS often resorts to Summonses, relying on its statutory power to pressure any person it "deems proper."[11]

III. Audit Determinations Deemed Correct

There is a general presumption in federal tax disputes that determinations made by the IRS during an audit are correct.[12] In other words, when the IRS alleges in a Notice of Deficiency or similar document that taxpayers owe additional taxes, penalties, and interest, the Tax Court starts with the notion that what the IRS claims is true. Legislative history explains this rule, which surprises many taxpayers raised in the innocent-until-proven-guilty tradition:

> The general rebuttable presumption that the [IRS's] determination of tax liability is correct is a fundamental element of the structure of the Internal Revenue Code. Although this presumption is judicially based, rather than legislatively based, there is considerable evidence that the presumption has been repeatedly considered and approved by the Congress. This is the case because the Internal Revenue Code contains a number of civil provisions that explicitly place the burden of proof on the [IRS] in specifically designated circumstances. The Congress would have enacted these provisions only if it recognized and approved of the general rule of presumptive correctness of the [IRS's] determination.[13]

One effect of this presumption is that the IRS (i) can gather all the relevant data by conducting a multi-year audit replete with interviews, IDRs, Summonses, third-party contacts, and more, (ii) issue a Notice of Deficiency at the end of the audit alleging that the taxpayers owe the IRS a significant sum, but without specifying the reasons for such liability, and (iii) then sit back at the Tax Court trial, watching taxpayers cope with the burden of presenting all documents, witness testimony, and other evidence in an effort to counter the IRS' assertions.

IV. Initial Documents Filed with the Tax Court

Notices of Deficiency issued by the IRS and left uncontested by targeted taxpayers are judged accurate. This means that, after the period during which taxpayers have the right to file a Petition with the Tax Court expires, the IRS can "assess" (*i.e.*, convert from a proposed debt to an actual debt) the amounts shown in the Notice of Deficiency and begin taking collection actions. Taxpayers normally want to avoid this, so they file a timely Petition with the Tax Court. It must contain, among other things, clear and concise allegations of every error that the IRS committed in issuing the Notice of Deficiency, along with supporting facts.[14]

In response to a Petition, the IRS must file an Answer with the Tax Court featuring a specific admission or denial to each allegation made by the taxpayers, or a statement that the IRS lacks sufficient information to determine whether a particular allegation is true or not.[15] Any allegation left unaddressed by the IRS in its Answer is deemed admitted.[16]

If the IRS makes any affirmative allegations in its Answer, then the taxpayers should file a Reply with the

Tax Court, admitting, denying, or professing ignorance about each allegation.[17] In situations where a taxpayer submits a Reply but neglects to deny an allegation raised by the IRS, the Tax Court concludes that the taxpayer is admitting it.[18]

Once the parties have completed the initial Tax Court pleadings consisting of the Petition, Answer, and Reply, the parties can begin informal discovery.

V. Data Gathering After the Audit

The IRS has a monopoly on data-gathering *during* the audit phase of a tax dispute, but this changes after the IRS issues a Notice of Deficiency, the taxpayer files a Petition with the Tax Court, and litigation begins. At that point, both parties, the IRS and the taxpayer, have at their disposal several mechanisms to help them develop their positions, strategies, *etc.* Implementing such mechanisms is called conducting pre-trial "discovery." One purpose of discovery is to assist the parties in agreeing to as many items as possible, without intervention from the Tax Court, before litigation begins. Put differently, the parties must collaborate to eliminate areas of disagreement, and thus narrow the fight, before getting the Tax Court involved. More on this below.

A. Playing Nice at the Outset

As indicated above, a taxpayer often challenges an unfavorable Notice of Deficiency or similar document by filing a Petition with the Tax Court. After the taxpayer and the IRS have submitted all their initial pleadings (*i.e.*, Petition, Answer, and Reply), they can start the pretrial discovery process. The Tax Court is unique in this regard, requiring that the parties "informally" exchange data as much as possible *before* employing "formal" discovery tools, such as requests for admissions, requests for production of documents, interrogatories, and depositions.[19] Additionally, the parties must stipulate "to the fullest extent to which complete or qualified agreement can or fairly should be reached" all non-privileged facts and documents that might be relevant to a case.[20] The Internal Revenue Manual is unambiguous in directing IRS attorneys to exhaust all informal means before increasing the intensity:

> The Tax Court is insistent that that the parties use informal efforts to obtain needed information for the preparation of the case for trial. The court expects the parties to discuss, deliberate, and exchange ideas, thoughts and opinions on an informal basis before resorting to the [formal] methods specified in the rules. Short cuts to the use of formal discovery will not be tolerated.[21]

B. General Discovery Rules

The parties enjoy significant latitude in making inquiries; they can seek any data that is non-privileged and that "is relevant to the subject matter involved in the pending case."[22] The fact that the specific data sought by the parties cannot be introduced as evidence during a Tax Court trial is not an impediment, as long as such data "appears reasonably calculated to lead to discovery of admissible evidence."[23]

The use of discovery tools is not limitless, of course. The Tax Court can control the frequency or extent of data requests if it determines that the data sought is unreasonably cumulative or duplicative, the party seeking the data could obtain it more conveniently from another source, the party seeking the data has already had "ample opportunity" to obtain it, or the request is "unduly burdensome or expensive."[24]

Special rules exist with respect to experts. Parties generally cannot use discovery tools to obtain draft versions of reports prepared by experts.[25] Moreover, opposing parties cannot get access to communications between attorneys and their expert witnesses, unless they relate to how much the experts are charging or to data, facts, or assumptions that the attorneys supplied the experts for use in preparing their reports.[26] Finally, when it comes to non-testifying expert witnesses (*i.e.*, those hired exclusively to assist in preparation for trial), parties ordinarily may not use discovery tools to learn the facts known to, or opinions held by, such witnesses.[27]

VI. Effect of Items Established During Discovery

As explained earlier in this article, once the parties have submitted all initial pleadings with the Tax Court, they can begin informal discovery. The process, of course, can be complicated, involving a maze of moves, countermoves, timing issues, squabbles, and tactical considerations. A profound analysis of all things discovery is not necessary for purposes of this article; only the relevant items are highlighted below.

Taxpayers have the right to gather items from the IRS by submitting written interrogatories, requests for documents and/or information stored electronically, and demands for depositions.[28] Once taxpayers have obtained such items, they can use them during a Tax Court trial, or in any

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related proceeding before or after the trial, to the extent allowed by the federal rules of evidence.[29] This includes presenting them as evidence at trial, utilizing them to discredit witnesses, *etc.*[30]

In addition, taxpayers generally can submit to the IRS requests for admissions about any non-privileged matters that are relevant to the Tax Court litigation.[31] The IRS must respond to such requests in writing within 30 days, admitting or denying each matter and explaining its reasoning, or stating an objection.[32] Any item that the IRS expressly admits, as well as any item deemed admitted because of the IRS' failure to address it, is "conclusively established" for purposes of the Tax Court dispute.[33] This status only changes in rare situations where the Tax Court, in response to a Motion filed by one of the parties, permits withdrawal or modification of the admission.[34]

To expedite and focus the Tax Court dispute process, the parties must "stipulate" to all matters to the greatest extent possible before trial.[35] This includes all facts, all documents, and all evidence that "fairly should not be in dispute."[36] It also covers all matters obtained through pre-trial discovery, which is merely an aid to the ultimate stipulation process.[37] Stipulations are broad in that they can address facts, application of law to facts, or opinions.[38] As long as the truth and authenticity of a fact or evidence offered by one party is not contested, the other party cannot object to the stipulation of such item based on grounds that it supposedly is irrelevant or immaterial to the tax dispute at hand.[39] The parties accumulate and present the agreed items to the Tax Court as one or more Stipulations of Facts, with exhibits.[40] The Tax Court ordinarily treats as "conclusive admissions" all stipulations made by the parties.[41] Importantly, the Tax Court will not allow a party to later qualify, change, or contradict a stipulation, in whole or part, except in limited situations "where justice requires."[42]

VII. Main Briefs Filed with the Tax Court

The Tax Court generally instructs the parties to file, and exchange among themselves, Pre-Trial Briefs two or three weeks before the start of a trial.[43] When distributing to the parties its Standing Pretrial Order, the Tax Court tends to provide a sample Pre-Trial Brief. The sample indicates that each party must disclose several items, including, but not limited to, the name of the case, docket number, identities of attorneys involved, amounts in dispute, whether pre-trial settlement is likely, estimated length of trial, status of the Stipulation of Facts, anticipated witnesses, summary of the facts, and a discussion of applicable legal issues and authorities.[44]

After trial, the parties normally must file Post-Trial Briefs, followed by Reply Briefs.[45] The Tax Court and practitioners occasionally refer to these as Opening Briefs and Answering Briefs, respectively. These submissions contain the facts that a party wants the Tax Court to determine, based on the initial pleadings (*i.e.*, Petition, Answer, and Reply), data obtained through the pre-trial discovery process, Stipulations of Facts, expert reports, witness testimony, and other evidence presented during a trial.[46]

Sometimes the parties manage to agree on all material items before a Tax Court trial is scheduled. A special rule applies in these situations, when a trial is not necessary to introduce additional evidence. The parties essentially submit all the documentary evidence to the Tax Court, along with Pre-Trial Briefs and an appropriate Motion, and simply await its decision.[47]

VIII. Latest Case Showing Permanence of Concessions

Estate of DeMuth addresses a novel legal issue, which has the potential of affecting many Tax Court cases in the future. It has received relatively little attention, though. Below is an analysis of the key aspects.

A. Overview of the Facts

The taxpayer granted a Power of Attorney to his son in 2007. It empowered the son to make cash gifts to the taxpayer's family members up to the annual exclusion amount for federal gift tax purposes. The taxpayer had various assets, among them an investment account at Mighty Oak Strong America Investment Co. ("Mighty Oak"). The son made familial gifts from 2007 through 2014 pursuant to the Power of Attorney.

The taxpayer's health begin to decline in mid-2015, and he died on September 11, 2015. The taxpayer lived in Pennsylvania when he died, as did his son. A few days before the taxpayer's death, on September 6, 2015, the son attempted to make some last-minute gifts. Specifically, he issued 11 checks to family members from the Mighty Oak account, which totaled $464,000. The checks were numbered consecutively, starting with 1214 and ending with 1224.

Here is what happened to the checks in relation to the death of the taxpayer: One check was both deposited by the recipient and paid by Mighty Oak before the taxpayer

died; Three checks were deposited by the recipients before the taxpayer died but were not paid by Mighty Oak until afterwards; and the remaining seven checks were deposited by the recipients and paid by Mighty Oak after the taxpayer died.

The son, who had assumed the role of executor of the taxpayer's estate, filed a Form 706 (U.S. Estate and Generation-Skipping Tax Return) reporting the value of the Mighty Oak account as of the date of death, September 11. In doing so, he *excluded* the value of all 11 checks, totaling $464,000. His thought process was likely that the money had already been "paid" from the Mighty Oak account on September 6, when he wrote the checks to the 11 family members.

The IRS audited the Form 706, disagreed with the son's position regarding treatment of the checks and related value of the Mighty Oak account, and issued a Notice of Deficiency. In particular, the IRS claimed that the son had undervalued the estate by $436,000, which was the combined value of 10 of the 11 checks. The IRS determined that only one check, for $28,000, should have been excluded from Form 706 because it was deposited by the recipient and paid by Mighty Oak before the taxpayer died.

B. Pleadings, Discovery Items, and Briefs

The estate filed a timely Petition with the Tax Court challenging the Notice of Deficiency. The Docket Sheet for the case reveals that the parties filed several other documents of significance. For instance, the IRS filed an Answer, each party filed a Pre-Trial Brief, the parties filed a Joint Stipulation of Facts with exhibits, the parties filed a Motion seeking a decision by the Tax Court based on the existing evidence without a need for trial, and each party filed an Opening Brief and later an Answering Brief pursuant to an Order from the Tax Court.

C. Judicial Analysis

The Tax Court explained that the relevant provision, Code Sec. 2033, states that a gross estate includes the value of all property, to the extent of the interest therein of the decedent, at the time of death.[48] The applicable regulation clarifies that any cash belonging to the decedent on the date of death (whether in his possession, in the possession of another, or deposited with a bank) is part of the decedent's estate.[49] Based on this guidance, the IRS framed the issue as follows:

> [T]he value of any check written by [decedents] that still belongs to them at their death is includible in their gross estate; however, the funds from such a check no longer belong to [decedents] at their death if they executed a completed gift of the check during their life. As such, we must determine whether the checks at issue represent completed gifts.[50]

A gift is not considered complete until the donor has "parted with dominion and control as to leave no power to change its disposition."[51] The Tax Court noted that whether the checks issued by the son on the Mighty Oak account constituted completed gifts as of September 11 must be determined by applying state law. Because the taxpayer was domiciled in Pennsylvania when he died, the Tax Court looked to the law of that state. The Tax Court summarized applicable state law as follows. As long as the drawer of a check can make a stop-payment order, the delivery of the check is still revocable, the drawer has not surrendered dominion, and the gift is not complete. The intention of the drawer to immediately give the payee the right to the funds beyond recall is insufficient unless irrevocable delivery is present. The Tax Court then identified its main inquiry in the case: We must analyze, under Pennsylvania law, "at what point a drawer [of a check] can no longer make a stop-payment order, as that will determine the point at which the gift of a check becomes irrevocable and is therefore completed."[52]

After examining some banking terminology that is beyond the scope of this article, the Tax Court concluded that Mighty Oak did not accept, certify, or make final payment on 10 of the 11 checks until after the taxpayer died. Consequently, the taxpayer or the son could have theoretically placed a stop-payment order on such checks before Mighty Oak made final payment. The result of this under Pennsylvania law is that the 10 checks did not constitute completed gifts and their combined value should figure into the taxpayer's gross estate. However, the Tax Court noted that it could not stop its analysis there.

D. Erroneous Terms and Three Positions

The Tax Court admonished the parties, and seemingly the public at large, that "[i]n all matters before this Court, the use of proper terminology is of the utmost importance."[53] It then went on to explain the critical differences between the terms "drawee bank" and "depository bank." The former is the entity that the drawer instructs to make payment of a check, while the latter is the entity that the payee uses to cash or deposit a check. The Tax Court emphasized that these two terms are distinct and not interchangeable. In the *Estate of DeMuth*, the taxpayer is the "drawer," Mighty Oak is the "drawee bank," and the various institutions

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where family members were going to cash or deposit their checks are the "depository banks."

The Tax Court explained that both the parties incorrectly used the terms in their Joint Stipulation of Facts, Opening Briefs, and Answering Briefs. The improper usage was helpful to the taxpayer, and harmful to the IRS, because it resulted in the IRS expressly conceding that the value of three checks should be excluded from the taxpayer's gross estate, even though Pennsylvania law indicated just the opposite. It helps to unpack this somewhat.

1. Taxpayer's Position

The taxpayer argued that the value of *all* 11 checks, which can be organized into three categories, should be excluded from the value of the taxpayer's gross estate. The First Category consisted of one check, which was both deposited by the recipient and paid by Mighty Oak before the taxpayer died. The Second Category was comprised of three checks, which were deposited by the recipients before the taxpayer died but were not paid by Mighty Oak until afterwards. The Third Category was made up of the remaining seven checks, which were deposited by the recipients and paid by Mighty Oak after the taxpayer died.

2. Tax Court's Position

The Tax Court indicated that the correct answer, after applying Pennsylvania law, was that only the value of the check in the First Category should be excluded from the gross estate, while the value of the checks in the Second Category and Third Category form part of the gross estate.

3. IRS' Position

The IRS, according to its concessions in the Joint Stipulation of Fact, Opening Brief, and Answering Brief, suggested that the value of the checks in the First Category and Second Category fall outside the gross estate, while only the value of the checks in the Third Category is counted in calculating the size of the gross estate.

E. Effect of Earlier Concessions by the IRS

The Tax Court indicated that it cannot determine the specific reason why the IRS made certain concessions, which were detrimental to its financial position and contrary to applicable law. It speculated, though, that the problematic concessions likely derived from the IRS' misunderstanding of the key banking terms. The Tax Court then wrestled with what to do.

It noted that *Estate of DeMuth* creates an "issue of first impression," one that "has seemingly never come before the [Tax] Court."[54] This is because the case involves resolution of issues by the Tax Court, without a trial, pursuant to a Motion filed by the parties. Two earlier Tax Court decisions addressed situations in which the IRS made a concession before or during trial that was contrary to applicable law, and then the IRS tried to withdraw its earlier concession for the first time in its Post-Trial Brief.[55] The Tax Court concluded that the procedural differences between *Estate of DeMuth* and the two earlier cases should not yield inconsistent rulings.

The Tax Court underscored that the IRS made the improper concession three times (in the Joint Stipulation of Facts, Opening Brief, and Answering Brief), the IRS neither realized its error nor attempted to withdraw the concession at any point, and the taxpayer relied on the IRS' concession in advancing its positions with the Tax Court, particularly in its Reply Brief. In view of these factors, the Tax Court obligated the IRS to live with its erroneous concession, thereby allowing the value of the checks in the First Category and Second Category to escape U.S. estate taxes. The Tax Court explained that ruling any other way would unfairly prejudice the taxpayer. Although not expressly discussed, it is evident that the Tax Court was enforcing its own rule that any stipulation by a party, including the IRS, is a "conclusive admission," and "justice" in *Estate of DeMuth* did not warrant subsequent alteration or elimination of such admission.

IX. Conclusion

This article demonstrates that potential evidence in a tax dispute can be marshalled in various manners, including through interviews, IDRs, Summonses, third-party contacts, Petitions, Answers, Replies, informal exchanges, interrogatories, depositions, admissions, document and electronic-data productions, and stipulations. This article further shows that, when it comes to identifying concessions by a party, the Tax Court is willing to consider statements made in Pre-Trial, Post-Trial, and Reply Briefs. Finally, the article reveals that the Tax Court ordinarily characterizes stipulations by parties as "conclusive admissions" and admissions by parties as "conclusively established." Taxpayers embroiled in tax disputes with the IRS should be aware of these realties and retain experienced legal counsel because, if not, what happened to the IRS in *Estate of DeMuth* could very easily happen to them, too.

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[1] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72.

[2] Code Sec. 6011(a); Reg. §1.6011-1(a).

[3] Code Sec. 6001.

[4] Reg. §1.6001-1(a).

[5] Reg. §1.6001-1(e).

[6] Code Sec. 7602(a); Reg. §301.7602-1(a); David M. Richardson *et al.* CIVIL TAX PROCEDURE, LexisNexis (2005), pgs. 95–104.

[7] Code Sec. 7602(a); Reg. §301.7602-1(a).

[8] Code Sec. 7604(b); Code Sec. 7210.

[9] David M. Richardson *et al.* CIVIL TAX PROCEDURE, LexisNexis (2005), pg. 96.

[10] Code Sec. 7602(c)(1).

[11] Code Sec. 7602(a); Reg. §301.7602-1(a).

[12] Tax Court Rule 142(a)(1).

[13] U.S. House of Representatives, Internal Revenue Service Restructuring and Reform Act of 1997. 105th Congress, 1st Session. Report 105-364 (Oct. 31, 1997), pg. 55; U.S. Senate, Internal Revenue Service Restructuring and Reform Act of 1998. 105th Congress, 2nd Session. Report 105-174 (Apr. 22, 1998), pg. 43.

[14] Tax Court Rule 34(b)(4) and (5).

[15] Tax Court Rule 36(b).

[16] Tax Court Rule 36(b).

[17] Tax Court Rule 37.

[18] Tax Court Rule 37(c).

[19] *Branerton Corp.*, 61 TC 691, Dec. 32,479 (1974); Tax Court Rule 70(a)(1).

[20] Tax Court Rule 91(a)(1).

[21] IRM §35.4.3.2 (Aug. 11, 2004).

[22] Tax Court Rule 70(b).

[23] Tax Court Rule 70(b).

[24] Tax Court Rule 70(c)(1). In determining whether a discovery request places an inappropriate burden or expense on a party, the Tax Court considers several factors, including the needs of the case, the amount in dispute with the IRS, the limited resources of the parties, and the importance of the issues at stake.

[25] Tax Court Rule 70(c)(4)(A).

[26] Tax Court Rule 70(c)(4)(B).

[27] Tax Court Rule 70(c)(4)(C).

[28] Tax Court Rule 70(a)(1).

[29] Tax Court Rule 70(e).

[30] Tax Court Rule 70(e).

[31] Tax Court Rule 90(a).

[32] Tax Court Rule 90(c).

[33] Tax Court Rule 90(f); *see C.H. Stubbs*, CA-11, 86-2 USTC ¶9645, 797 F2d 936 (1986); *T.V. Cassidy*, CA-7, 87-1 USTC ¶9225, 814 F2d 477 (1987); *B.C. Frazier*, 91 TC 1, Dec. 44,878 (1988).

[34] Tax Court Rule 90(f).

[35] Tax Court Rule 91(a).

[36] Tax Court Rule 91(a).

[37] Tax Court Rule 91(a)(2).

[38] Tax Court Rule 91(a)(1).

[39] Tax Court Rule 91(a)(1).

[40] Tax Court Rule 91(a)(1) (explaining that "[d]ocuments or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.").

[41] Tax Court Rule 91(e); *but see Warren Jones Co.*, 68 TC 837, Dec. 34,611 (1977) (limiting the effect of a stipulation to a case-by-case basis).

[42] Tax Court Rule 91(e); *S. Sennett*, 69 TC 694, Dec. 34,966 (1978); *Korangy*, 56 TC M 989, Dec. 45,403(M), TC Memo. 1989-2; *J.R. Hillman*, CA-6, 82-2 USTC ¶9595, 687 F2d 164 (1982); *A.B. Bakare*, 67 TCM 2235, Dec. 49,681(M), TC Memo. 1994-72.

[43] Tax Court Rule 110(e).

[44] Author has hundreds of similar Standing Pretrial Orders on file.

[45] Tax Court Rule 151(a).

[46] Tax Court Rule 151(e)(3).

[47] Tax Court Rule 122(a).

[48] Code Sec. 2033.

[49] Reg. §20.2031-5.

[50] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72, pg. 4.

[51] Reg. §25.2511-2(b).

[52] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72, pg. 5.

[53] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72, pg. 7.

[54] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72, pg. 8.

[55] *Estate of DeMuth*, 124 TCM 22, Dec. 62,080(M), TC Memo. 2022-72, pg. 9 (citing to *G. Glass*, 56 TCM 764, Dec. 45,196(M), TC Memo. 1988-550 and *P. Cogan*, 40 TCM 1032, Dec. 37,170(M), TC Memo. 1980-328).

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