



United States Tax Court

Washington, DC 20217

Petitioner(s) v. COMMISSIONER OF INTERNAL REVENUE, Respondent Docket No.

SUBPOENA TO TESTIFY AT A DEPOSITION

To _____

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in the above-captioned case:

Place: _____ Date and Time: _____

The deposition will be recorded by (name of officer or recording company): _____

Production: You must also bring with you to the deposition the following documents, electronically stored information, or tangible things (blank if not applicable):

Use reverse if necessary

The provisions of Tax Court Rule of Practice and Procedure 147(d), relating to your protection as a person subject to a subpoena, and Rule 147(e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.



Date: _____

Signature: _____

Counsel for -----

/s/ Stephanie A. Servoss Clerk of the Court

RETURN ON SERVICE

The above-named witness was summoned on _____ at _____ Date Time

by delivering a copy of this subpoena to the witness and complying with the requirements of Rule 147(b)(1) of the Rules of Practice and Procedure of the Tax Court concerning fees and mileage.

Dated _____ Signed _____

Subscribed and sworn to before me this _____ day of _____, 20____

Name Title

[SEAL]

Tax Court Rule of Practice and Procedure 147 (d) and (e) (Effective 03/20/2023)

(d) Protecting a Person Subject to a Subpoena; Enforcement:

(1) *Avoiding Undue Burden or Expense; Sanctions:* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The Court will enforce this duty and impose an appropriate sanction, which may include an award of lost earnings and reasonable attorney's fees, against a party or attorney who fails to comply.

(2) *Command To Produce Materials:*

(A) *Release from Attendance:* If a person has complied with a command in a subpoena to produce documents, electronically stored information, or tangible things, the serving party may excuse the person from attending and giving testimony at the time and place specified in the subpoena.

(B) *Objections:* A person commanded to produce documents or tangible things may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials, or to producing electronically stored information in the form or forms requested. The objection must be served within 15 days after the subpoena is served or within the time specified for compliance, if earlier. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena:*

(A) *When Required:* On timely motion, the Court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iii) subjects a person to undue burden.

(B) *When Permitted:* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative:* In the circumstances described in Rule 147(d)(3)(B), the Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena:

(1) *Producing Documents or Electronically Stored Information:* These procedures apply to producing documents or electronically stored information:

(A) *Documents:* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified:* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form:* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information:* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(c)(1). The Court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection:*

(A) *Information Withheld:* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced:* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the Court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.