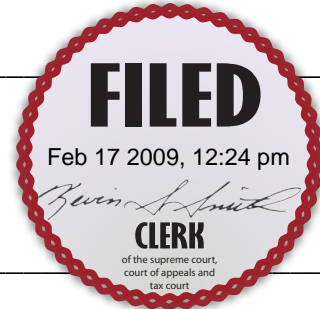


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**IN THE
INDIANA TAX COURT**



WENDT LLP,)
)
Petitioner,)
)
v.) Cause No. 02T10-0701-TA-2
)
INDIANA DEPARTMENT OF)
STATE REVENUE,)
)
Respondent.)

COMBINED ORDER ON PETITIONER'S MOTION TO AMEND
AND RESPONDENT'S MOTION TO STRIKE

NOT FOR PUBLICATION
February 17, 2009

Come now the parties on Wendt LLP's (Wendt) "Motion for Leave to Amend Petition to Set Aside Final Determination of the Indiana Department of State Revenue" (hereinafter, "motion to amend") and the Indiana Department of State Revenue's (Department) "Motion to Strike and Response in Opposition to Petitioner's [Motion to Amend]" (hereinafter, "motion to strike"). Having held a hearing thereon, and being duly advised in the premises, the Court now DENIES both motions for the following reasons.

Motion to Amend

On January 5, 2007, Wendt filed a “Petition to Set Aside Final Determination of the Indiana Department of Revenue” (Petition) with this Court. Wendt’s Petition appealed the Department’s Letter of Findings that was issued on September 11, 2006 (hereinafter, Department’s LOF). On September 11, 2008, Wendt moved to amend its Petition for the sole purpose of clarifying that its appeal covers the 2001-2004 tax years. (See Mot. to Amend ¶ 18.) On September 19, 2008, the Department filed an objection thereto. (See Mot. to Strike ¶¶ 10-41.)

The Court, having reviewed the Department’s LOF, finds that it covers the 2002-2004 tax years. In addition, the Department’s LOF states that “[Wendt] protested the assessment (as well as a denial of refund claim for a period *preceding the period covered in this letter of findings, and to which the Department’s findings in this letter of findings also applies*)[.]” (Mot. to Amend Ex. B. at 2 (emphasis added).) Therefore, the Court finds that Wendt’s appeal also covers the 2001 tax year. As a result, there is no need for Wendt to amend its Petition to include the purportedly omitted years, given that it covers the 2001-2004 tax years. Wendt’s motion to amend, therefore, is DENIED.

Motion to Strike

The Department has moved to strike Exhibits F and H of Wendt’s motion to amend, as well as paragraphs 14, 15, and 26 of the motion. The Department argues that those exhibits and paragraphs violate Indiana Rule of Evidence 408 by referring to

confidential aspects of the parties' settlement discussions.¹ (Mot. to Strike ¶¶ 42-43 (footnote added).) The Department asserts that striking those exhibits and paragraphs not only preserves and reaffirms the confidential nature of the settlement discussions themselves, but it also encourages parties to enter into settlement discussions in general. (See Mot. to Strike ¶¶ 45-47.)

In response, Wendt argues that Rule 408 is inapplicable. More specifically, Wendt explains that it did not refer to the parties' settlement discussions to show that the Department had erroneously denied its claims; rather, it only referred to them to demonstrate that the Department knew that its Petition covered the 2001-2004 tax years. (See Pet'r Reply to [Mot. to Strike] ¶¶ 7-8.) Therefore, argues Wendt, the exhibits and the paragraphs are properly before the Court and should not be stricken. The Court agrees.

Indiana's evidence rules are to be "construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and

¹ Indiana Rule of Evidence 408 provides in pertinent part:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Ind. Evidence Rule 408.

proceedings justly determined.” Ind. Evidence Rule 102. In this case, it does not appear that Wendt referenced the parties’ settlement discussions for an improper purpose (such as establishing liability); rather, it appears that Wendt referenced those discussions to demonstrate that its challenge of the 2001-2004 tax years was properly before the Court. Thus, Indiana Evidence Rule 408 is inapplicable and the Department’s motion to strike is DENIED.

CONCLUSION

For the foregoing reasons, both Wendt’s motion to amend and the Department’s motion to strike are DENIED. The Court will, under separate order, schedule a case management conference with the parties to discuss pre-trial matters and scheduling.

SO ORDERED this 17th day of February, 2009.

Thomas G. Fisher, Judge
Indiana Tax Court

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