

United States

IRS Joins Amazon in Request for Judge, Saying Case Designated for Litigation

BNA Snapshot

Key Development: IRS joins **Amazon** in seeking assignment of judge.

Key Takeaway: Agency says issues in case are designated for litigation.

Going Forward: **Amazon** represents the IRS's opportunity to revisit the issue it lost in a 2009 case involving Veritas.

By *Dolores W. Gregory*

The Internal Revenue Service has joined in [Amazon.com](#)'s motion to seek assignment of a judge in the electronic commerce giant's transfer pricing dispute, indicating that the issues in the case have been designated for litigation by the agency. [[Amazon.com Inc. v. Comr., U.S. T.C., No. 31197-12, motion filed 7/3/13](#)]

The company is challenging a \$2 billion adjustment in connection with a qualified cost sharing arrangement between it and a European subsidiary ([21 Transfer Pricing Report 911, 1/24/13](#)).

Amazon claims that the IRS erred in relying on a discounted cash flow method previously rejected by the U.S. Tax Court in *Veritas Software Corp. v. Comr.*, 133 T.C. 297 (18 *Transfer Pricing Report* [843](#), 890,12/17/09).

The adjustment, if upheld, would result in a \$234 million assessment for tax years 2005-06.

Amazon sought assignment of a judge in a motion filed June 3. The company said that a detailed pretrial order would be necessary to assist in the “orderly development” of the

complex case, which likely will involve extensive fact and expert witness testimony and could require a three-week trial.

Informal discovery is under way, according to **Amazon's** motion. Because the IRS is seeking information that the company believes is "highly confidential," **Amazon** said it expected to seek protective orders.

However, according to the July 3 IRS filing, the agency plans to serve formal discovery on **Amazon** to secure any documents withheld by the taxpayer on grounds of confidentiality.

If **Amazon** does not comply, the IRS said, it will file a motion to compel production of the documents by mid-September.

The agency also indicated that it anticipated a proposed trial schedule would be filed by mid-September.

Amazon is represented by John Magee of Bingham McCutchen LLP in Washington, D.C. The IRS is represented by Jill Frisch, a special trial attorney based in Newark, N.J.

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