

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

KATHLEEN KAHN,)
)
 Petitioners,)
)
 v.) Docket No. 1517-13 L
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

This section 6330(d)¹ case is before the Court on petitioner’s motion for summary judgment, filed June 3, 2014, and respondent’s motion to remand, filed August 19, 2014. Both motions were heard on Washington, D.C. on August 27, 2014. Counsel for respondent appeared, opposed petitioner’s motion and argued in support of respondent’s motion.

Petitioner’s objection to respondent’s motion, and her written statement in lieu of attendance at the hearing, see Rule 50(c), were filed August 26, 2014, but those documents were not brought to the attention of the undersigned until August 28, 2014. Consequently, the positions taken in those documents were not taken into account during the hearing.

At the conclusion of the hearing, both motions were taken under advisement. During the hearing, however, it was clear that the Court intended to deny petitioner’s motion and, subject to conditions discussed at the hearing, grant respondent’s motion. Concerned that the remand would unnecessarily delay the matter further, the Court was persuaded by respondent’s argument that a remand would be beneficial because it would allow for respondent to review the

¹Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

administrative process giving rise to the underlying liabilities in dispute in this matter. Although it would seem that a remand could only work to petitioner's favor, in her objection petitioner opposes the remand because: (1) it would cause further delay; and (2) she did not expect that the matter would be given fair consideration by respondent's settlement officer.

In his motion to remand, as well as during the hearing, respondent acknowledged his burden of proof. See sec. 6703(a). According to petitioner, respondent has failed to satisfy that burden. Whether respondent's burden can be met remains to be seen; it is clear from the submissions of the parties, however, that material facts with respect to that burden remain in dispute. It follows that resolution of this case by summary adjudication at this juncture is not appropriate. See Rule 121(a). The Court's inclination to deny petitioner's motion, as discussed at the hearing, has not been altered by petitioner's written statement. The positions taken by petitioner in that written statement and in her objection to respondent's motion, however, constrain us to reconsider our expressed intention with respect to respondent's motion to remand.

It is clear from petitioner's submissions that she does not want to participate in further administrative proceedings. Mindful that we have jurisdiction in this matter to review, de novo, the underlying liabilities here in dispute, we weigh the likely benefits of a remand against petitioner's (and the Court's) concerns about any additional delay that a remand might cause. In so doing, we find that the scale tips ever so slightly in petitioner's favor. That being so, for the foregoing reasons, as well as for the reasons set forth more fully in the transcript of the August 27, 2014, proceedings, it is

ORDERED that petitioner's motion for summary judgment, and respondent's motion to remand are denied. It is further

ORDERED that, with leave here granted, respondent's amendment to answer (or amended answer) is due on or before September 19, 2014. So as to avoid further delay, it is further

ORDERED that affirmative allegations, if any, made in respondent's

amendment to answer (or amended answer), if submitted, will be deemed denied by petitioner without the need to reply. See Rule 37.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
August 28, 2014