

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KVC

CHASTITY KIRVEN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 30393-15W
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

In separate Orders, one issued as early July 20, 2016, various pending motions were set for hearing in Dallas, Texas, on November 15, 2016. Dallas is the place petitioner requested for place of trial in this I.R.C. §7623(b)(4) case. Counsel for respondent appeared and were heard. There was no appearance by or on behalf of petitioner.¹

At the hearing the Court indicated that it would allow respondent to supplement his motion for summary judgment, filed June 2, 2016, by the submission of an affidavit or declaration supporting the facts recited in the motion. That declaration was filed on December 1, 2016. Also at the hearing the Court indicated that it was inclined to allow petitioner limited discovery as requested in her opposition to respondent’s motion for summary judgment, filed June 9, 2016, and her motion for discovery, filed June 16, 2016. However, upon further

¹In a document filed November 15, 2016, petitioner advised that she would not appear at the hearing because of insufficient notice. Otherwise, petitioner objected to scheduling multiple motions for hearing on the same day, and she has repeatedly challenged the jurisdiction of a special trial judge to act in this case. At the hearing the Court noted for the record the provisions of I.R.C. §7443A(b)(6) and (c), which upon assignment by the chief judge, specifically grants jurisdiction in cases such as this one to a special trial judge. In many of her filings petitioner has also relied upon inapplicable provisions of the Federal Rules of Civil Procedure in her opposition to the assignment of the motions here under consideration to the undersigned. She would be well advised to review the transcript of the hearing so as to be better informed as to the merits, or lack thereof, of many of her positions.

consideration, after taking into account the statements contained in the above-referenced declaration, allowing discovery at this stage of the proceedings without some suggestion of a factual dispute would seem to be little more than an inappropriate “fishing expedition”, not to mention contrary to the Court’s requirement that the parties informally consult or communicate before discovery is initiated. See Rule 70(a); Branerton Corp. v. Commissioner, 64 T.C. 191 (1975).² Petitioner is entitled to present information that challenges the statements contained in the declaration, and she will be given an opportunity to do so.

Premises considered, it is

ORDERED that on or before February 8, 2017, and after allowing petitioner to reconsider her refusal to consent to a confidentiality agreement that would allow respondent to provide her with information she might otherwise be seeking through discovery, petitioner shall supplement her opposition to respondent’s motion for summary judgment by the submission of credible information that disputes or challenges the representation contained in the above-referenced declaration. In the meantime, it is

ORDERED that (1) respondent’s motion for summary judgment, filed June 2, 2016; (2) petitioner’s motion for discovery and inspection of evidence, filed June 16, 2016; (3) respondent’s motion for protective order, filed June 30, 2016; and (4) petitioner’s motion for disqualification of counsel, filed July 8, 2016,

²At the hearing respondent’s counsel advised the Court that petitioner refused to agree to a confidentiality agreement that would have allowed respondent to disclose to petitioner information that might have otherwise be subject to section 6103 disclosure restrictions.

remain under consideration. All other pending motions as of the date of the hearing have been resolved by separate margin orders.³

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
December 7, 2016

³Those motions include: (1) petitioner's motion to reconsider motion to calendar, filed March 8, 2016; (2) petitioner's motion to unseal documents, judgment & exhibits entered into evidence regarding respondent's motion for summary judgment, filed June 21, 2016; (3) petitioner's request for pretrial conference, filed August 19, 2016; (4) petitioner's motion to set initial pretrial conference, filed August 22, 2016; (5) petitioner's motion to stay proceedings & case, filed October 25, 2016; (6) petitioner's motion to review special trial judge's order for hearing & notice of objections, filed November 3, 2016; and (7) petitioner's complaint of insufficient notice regarding special trial judge's order for hearing to review his orders & notice of objections, filed November 15, 2016.