

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

RITA LOPEZ,)
)
Petitioner,)
)
v.) Docket No. 20235-15S
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER

This case for the redetermination of deficiencies was tried in New York, New York, on June 22, 2016. During the trial, petitioner offered into evidence exhibits marked for identification as 11-P through 22-P, inclusive. The exhibits consist of notarized written statements, each dated March 15, 2015. According to petitioner, the statements are from her customers and were presented to respondent during the pendency of the examination of her 2012 and 2013 Federal income tax returns. When offered at trial respondent objected to the admission of the exhibits on the grounds of authenticity and hearsay.

At trial, the Court reserved ruling on respondent’s objections pending review of local law. Under New York law, if “a document on its face is properly subscribed and bears the acknowledgment of a notary public, there is a ‘presumption of due execution, which may be rebutted only upon a showing of clear and convincing evidence to the contrary.’” Chianese v. Meier, 285 A.D. 2d 315, 729 N.Y.S.2d 460, 466 (App. Div. 2001) (quoting Spilky v. Bernard H. La Lone Jr. P.C., 227 A.D. 2d 741, 641 N.Y.S. 2d 916, 918 (App. Div. 1996)), aff’d as modified, 98 N.Y. 2d 270, 746 N.Y.S. 2d 657, 774 N.E.2d 722 (2002).

Respondent has not offered any evidence to rebut the aforementioned presumption. Furthermore, Rule 142(b)¹ provides that “trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and

¹ Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

any evidence deemed by the Court to have probative value shall be admissible”; we find the written statements to be probative. Accordingly, it is

ORDERED that respondent’s objections to the admission of Exhibits 11-P through 22-P are overruled, and exhibits 11-P through 22-P, inclusive are admitted into evidence.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
January 6, 2017