

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

CAITLIN DENNIS,)
)
Petitioner,)
)
and) Docket No. 17166-16
)
JOHN WILCOX,)
)
Intervenor,)
)
v.)
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER

This section 6015(e)¹ case is before the Court on (1) respondent’s motion for entry of order that undenied allegations be deemed admitted pursuant to Rule 37(c), filed December 19, 2016 (Rule 37(c) motion), and (2) intervenor’s motion to withdraw, filed February 22, 2017.

Rule 37(c) Motion

Respondent’s Rule 37(c) motion was heard on March 1, 2017, in Washington, D.C., and the motion remains under advisement.

According to respondent’s status report, filed March 15, 2017, the parties intend to submit a stipulation of facts that will render the motion moot. As of the date of this Order, however, a stipulation of facts has not been submitted by the parties.

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

SERVED May 26 2017

Intervenor's Motion to Withdraw

By Order dated February 23, 2017, the parties were directed to submit responses to the intervenor's motion to withdraw. Respondent's notice of no objection was filed March 17, 2017. No response has been received from petitioner.

The petition in this case was filed on August 2, 2016. Petitioner seeks review of the final determination dated May 17, 2016, denying her request for innocent spouse relief for 2012. Respondent's answer was filed on September 22, 2016. Pursuant to section 6015(e)(4) and Rule 325, the notice of intervention submitted by John Wilcox was filed on October 31, 2016. According to Mr. Wilcox, petitioner is not entitled to the relief she seeks.

In his motion Mr. Wilcox claims that respondent has already granted him section 6015 relief for 2012. He goes on to note that he resides in New York State, while Richmond, Virginia, is the designated place of trial, and he lacks the resources to continue to be a party to this litigation. He now takes the position that he has nothing to gain by remaining a party.

Presently, our Rules do not address the withdrawal of an intervenor in a proceeding such as this one. Rule 1(b) provides that in any instance where there is no applicable rule of procedure, the Court or the judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure (FRCP) to the extent that they are suitably adaptable to govern the matter at hand.

Pursuant to FRCP Rule 21, a U.S. district court may, on its own or upon motion by a party and for just cause, exercise its discretion to drop a dispensable party. See Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832 (1989) (“[I]t is well settled that Rule 21 invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time”); Fritz v. Am. Home Shield Corp., 751 F.2d 1152, 1155 (11th Cir. 1985) (holding that before dismissing a party pursuant to Rule 21, a court must first make a finding that a party is not an indispensable party).

Considering the disputed issues between petitioner and respondent, and although intervenor might very well be called as a witness for one or the other of the parties, we are satisfied that he is not an indispensable party to this proceeding. The Court has no jurisdiction over intervenor's 2012 Federal income tax liability,

if any, in this proceeding, and petitioner's entitlement to section 6015 relief in no way is dependent upon intervenor's status as a party. Accordingly, we will grant his motion to withdraw.

Premises considered, it is

ORDERED that unless a stipulation of facts, as referenced in respondent's status report, filed March 15, 2017, is received sooner, respondent's Rule 37(c) motion is set for further hearing at the Motions Session of the Court scheduled to commence at 10:00 a.m. on Wednesday, June 21, 2017, in the South Courtroom at the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. It is further

ORDERED that John Wilcox's motion to withdraw, filed February 22, 2017, is granted in that Mr. Wilcox is withdrawn as a party/intervenor in this case. It is further

ORDERED that the caption of this case is amended to read: "Caitlin Dennis, Petitioner v. Commissioner of Internal Revenue, Respondent".

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
May 25, 2017