

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MICHAEL W. SWIADER, JR.,)
)
 Petitioner,)
)
 v.) Docket No. 13239-17 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This “collection due process” (“CDP”) case is set for trial at the Court’s Boston session beginning February 26, 2018. Now before the Court is a motion for summary judgment filed by respondent (the IRS), to which motion petitioner Michael W. Swiader, Jr., has failed to respond. We will set the IRS’s motion to be heard at the upcoming trial session. We will also permit the filing of a motion to be recognized as next friend.

The IRS’s motion for summary judgment

The IRS’s motion filed on December 21, 2017, seems to show—

- that only the years 2012 and 2013 are properly at issue here, because the petition was not filed in time as to the year 2011, and because for the year 2014 the IRS has not issued to Mr. Swiader a collection notice that forms the basis of this Court’s CDP jurisdiction;
- that the liabilities at issue were as reported by Mr. Swiader himself on his tax returns; that he did not challenge those liabilities during his CDP hearing before IRS Appeals; and that therefore he may not challenge the liabilities before this Court; and

- that IRS Appeals did not abuse its discretion regarding entering into a collection alternative with Mr. Swiader, because he declined the “streamlined” installment agreement that Appeals offered him, and he failed to provide financial information about himself to substantiate his entitlement to an installment agreement with more favorable terms.

By our order of December 22, 2017, we ordered Mr. Swiader to respond to the IRS’s motion by January 12, 2018, but as of this date the Court has not received any response from Mr. Swiader. We pointed out in our December 22 order that, under Tax Court Rule 121(d), if Mr. Swiader does not respond to a motion for summary judgment, then we may enter a decision against him.

As we discuss below, Mr. Swiader’s petition indicates that he suffers from a military disability and that he is confused by this matter. We will schedule this case to be argued at the upcoming session in Boston on February 26, 2018. If there is no appearance by Mr. Swiader or on his behalf, we expect to grant the IRS’s motion.

“Next friend”

Mr. Swiader’s petition alleges that he suffers from a military disability and that “my father ... has my POA” (i.e., presumably, his power of attorney as granted on Form 2848). We do not know the nature of Mr. Swiader’s disability. The petition alleges that Mr. Swiader found “so confusing” the information that the IRS gave him about his returns, and that “I would like the Court to hear this case as it has got to[o] confusing. I believe only the Court can correct this matter.”

For Mr. Swiader’s benefit, we point out that Tax Court Rule 60(d) provides for the prosecution of a case in this Court through a “next friend” recognized by the Court, if the petitioner is not “competen[t] ... to represent himself”. See Campos v. Commissioner, T.C. 2003-193. It may be (but we do not yet know) that Mr. Swiader’s disability renders him “incompetent” (in this sense) and would warrant the filing of a Motion to Be Recognized as Next Friend by an appropriate person (such as perhaps Mr. Swiader’s father or another relative). Such a motion should recite and explain:

1. that the person making the motion would like to be recognized as Mr. Swiader’s next friend and would represent Mr. Swiader’s best interests;
2. that Mr. Swiader cannot prosecute this case without assistance;

3. that the person making the motion has a significant relationship with Mr. Swiader; and

4. that there is no other person better suited to serve as next friend.

The person making such motion should present with his motion a statement from Mr. Swiader's personal physician (or equivalent support) showing that Mr. Swiader is not competent to prosecute this case by himself. The person making the motion should also state whether anyone (including Mr. Swiader) is known to have an objection to the Court's recognizing that person as Mr. Swiader's next friend.

It is therefore

ORDERED that, if any person proposes to serve as Mr. Swiader's next friend, then he or she shall appear with Mr. Swiader at the calendar call at 10:00 a.m., on Monday, February 26, 2018, in Room 5, 12th Floor of the John W. McCormack Post Office & Courthouse, 5 Post Office Square, Boston, Massachusetts, 02109, and move the Court to be recognized as Mr. Swaider's next friend. It is further

ORDERED that the Court will hear argument on the IRS's motion for summary judgment, at or soon after the calendar call at 10:00 a.m., on Monday, February 26, 2018, in Boston, Massachusetts. We expect that, if the motion is denied, the case will proceed to trial.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
January 31, 2018