

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

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

ORDER AND DECISION

This “collection due process” (“CDP”) case was set for trial at the Court’s Boston session beginning February 26, 2018, but the Commissioner filed a motion for summary judgment. We ordered petitioner Michael W. Swiader, Jr., to file a response, but he failed to do so. We therefore set the IRS’s motion to be heard at the upcoming trial session, and we suggested the possibility of the filing of a motion to be recognized as next friend. There was no appearance by or on behalf of Mr. Swiader at the February 26 calendar call. We will grant the Commissioner’s motion for summary judgment.

The IRS’s motion filed on December 21, 2017, shows--

- 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.

- 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 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.

By our order of January 31, 2018, we scheduled argument on the Commissioner’s motion at the session in Boston on February 26, 2018. We warned, “If there is no appearance by Mr. Swiader or on his behalf, we expect to grant the IRS’s motion.”

Our order of January 31, 2018, also observed that 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 by Form 2848). We pointed 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. We explained what such a motion should set out. No such motion has been filed.

When this case was called on February 26, 2018, there was no appearance by or on behalf of Mr. Swiader.

It is therefore

ORDERED that the Commissioner’s motion for summary judgment is granted, both on its merits (for the reasons stated in that motion) and, in the alternative, on the grounds that Mr. Swiader failed to comply with the Court’s Order that he respond to the motion and for his non-appearance at the calendar call in Boston on February 26, 2018, (see Rules 121(d), 123(b)). It is further

ORDERED AND DECIDED that the IRS may proceed with the collection of petitioner's Federal income tax for 2012 and 2013 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated May 9, 2017.

(Signed) David Gustafson
Judge

ENTERED: **MAR 06 2018**