

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WALLACE HAROLD PRIVETTE, JR.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 13339-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Now before the Court are (1) our Order to Show Cause dated March 16, 2018 (ECF 36), to which petitioner Dr. Wallace Harold Privette, Jr., has responded (ECF 39), and (2) Dr. Privette’s request for a continuance contained in his response. With the exceptions noted below, we will make absolute our Order to Show Cause, and we will deny the requested continuance.

Background

Commencement and of this suit and continuance

Dr. Privette timely mailed his petition in this case on June 4, 2014, to challenge notices of deficiency (“NODs”) that the Internal Revenue Service (“IRS”) issued to him on March 6, 2014, for the four years 2009 through 2012. (ECF 1.) After the Commissioner filed his answer on August 7, 2014 (ECF 3), Dr. Privette filed a motion to stay proceedings in this case on the basis of alleged misconduct by IRS personnel (ECF 4), which motion we denied by our order of September 30, 2014 (ECF 6).

By notice dated June 2, 2015 (ECF 10), this case was set for trial at the Court’s session beginning November 2, 2015. On October 15, 2015, the Commissioner mailed to Dr. Privette a proposed stipulation consisting of 61 paragraphs and 24 Exhibits. (ECF 41, Ex. C.)

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By his letter dated October 13, 2015 (ECF 18), Dr. Privette moved for a continuance, alleging that his documents had been destroyed by flood. Respondent did not object (see ECF 23), and our order of October 29, 2015 (see ECF 24), granted the continuance.

Filing and dismissal of bankruptcy proceeding

On October 23, 2015, Dr. Privette filed a petition in bankruptcy (see ECF 25, 27). As a result of the “automatic stay” of 11 U.S.C. § 362(c), proceedings in this case were then stayed (see ECF 26).

On October 19, 2016, the trustee in Dr. Privette’s bankruptcy case filed a “Motion and Memorandum of The Chapter 7 Trustee to Dismiss Case Pursuant to 11 U.S.C. § 707(a) & 521(e)(2)(B)” (see ECF 41, Ex. A), alleging that Dr. Privette appeared at one meeting of creditors but otherwise did not participate in his bankruptcy, alleging Dr. Privette’s failure to amend bankruptcy schedules, to produce requested tax returns to the trustee, and to attend continued meetings of creditors, and alleging that Dr. Privette “acknowledged deficiencies in his bankruptcy schedules, his failure to provide tax returns, and agreed to a dismissal of his case.” On November 17, 2016, Dr. Privette’s bankruptcy case--after having been pending (and having stayed these proceedings) for more than a year--was dismissed with no objection (see ECF 41, Ex. B).

By notice of December 4, 2017 (ECF 33), we set this case for trial at our session in Columbia, South Carolina, beginning April 30, 2018.

Proposed stipulation and order to show cause

On February 23, 2018, the Commissioner sent Dr. Privette a proposed Stipulation of Facts (consisting of 75 paragraphs and 25 exhibits), similar to the proposed stipulation sent in October 2015. (ECF 35, Ex. A.) Paragraphs 4 and 5 (citing Exhibits 2-J and 3-J) assert that for the year 2009 Dr. Privette and the IRS signed a Form 872, “Consent to Extend the Time to Assess Tax”.

Dr. Privette did not respond to requests that he contact respondent’s counsel, and on March 15, 2018, respondent filed a Motion for Order to Show Cause Why Proposed Facts and Evidence Should Not be Accepted as Established Pursuant to Rule 91(f) (ECF 35). By order dated March 16, 2018 (ECF 36), we–

ORDERED that Mr. Privette shall, on or before April 4, 2018, file a response in compliance with the provisions of Rule 91(f)(2), with proof of service of a copy thereof on opposing counsel, showing why the matters set forth in the IRS's proposed stipulation of facts, and accompanying exhibits, should not be deemed admitted for purposes of the pending case. For the matters that Mr. Privette does admit, his response should so indicate; for the matters he does not admit, his response should explain why and should state what he believes the actual facts to be. If no response is filed within the period specified above with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be entered accordingly, pursuant to Rule 91(f)(3).

On April 5, 2018, Dr. Privette mailed a response (ECF 39) that cites no paragraph or exhibit in the stipulation and consists largely of complaints about IRS misconduct. His response does apparently dispute the facts about the execution of the Form 872 for 2009 (in paragraphs 4 and 5) and/or the authenticity of the cited exhibits (Exs. 2-J and 3-J). Otherwise, his response does not address the assertions in respondent's proposed stipulation.

Dr. Privette's response also requests a continuance of trial. He alleges facts about his medical circumstances, but no documentation or corroboration is given to support his allegations.

Discussion

I. Order to Show Cause

Rule 91(f) and our order of March 16, 2018, required Dr. Privette to "show[] why the matters set forth in the IRS's proposed stipulation of facts ... should not be deemed admitted". He largely failed to make such a showing. Viewing the situation in the manner most favorable to Dr. Privette, we deem that he did make such a showing as to the execution of the Form 872 for 2009, so we will not deem paragraphs 4 and 5 to be admitted.

But otherwise, Dr. Privette failed to respond to the factual assertions in the Commissioner's proposed stipulation. Rule 91(f) provides that "for the matters he does not admit, his response should explain why and should state what he believes

the actual facts to be. If ... the response is ... not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated” Except for paragraphs 4 and 5, he did not “explain why” he did not admit the assertions, and he did not “state ... the actual facts”. His response is “not fairly directed” to the bulk of the assertions in the Commissioner’s proposed stipulation. We will therefore order that the most of the facts are deemed stipulated.

II. Motion for Continuance

Dr. Privette mailed on April 5, 2018, a request for a continuance of a trial long scheduled for April 30, 2018. Rule 133 provides, “A motion for continuance, filed 30 days or less prior to the date to which it is directed ... ordinarily will be deemed dilatory and will be denied unless the ground therefor arose during that period or there was good reason for not making the motion sooner.” Dr. Privette’s request, mailed 25 days before trial, is thus presumptively dilatory.

Moreover, Dr. Privette obtained one continuance by motion, and obtained a year-long stay by filing a bankruptcy petition that he failed to pursue. In view of this past dilatory behavior, we give heightened scrutiny to his new request for a continuance. He alleges medical circumstances (which he does not allege arose within those 30 days), but he submitted no documentation to substantiate his allegations. We are not persuaded that the continuance is warranted nor that granting it would actually promote the fair adjudication of this case.

It is therefore

ORDERED that Dr. Privette’s request for a continuance is denied. It is further

ORDERED that the Court’s order to show cause dated March 16, 2018 (ECF 36), is made absolute, in that the matters set forth in paragraphs 1-3 and 6-75 in the IRS’s proposed stipulation of facts (ECF 35, Ex. A) are deemed stipulated for purposes of this case.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
April 16, 2018