

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MURFAM ENTERPRISES LLC,)	
WENDELL MURPHY, JR.,)	
TAX MATTERS PARTNER, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 8039-16, 14536-16,
)	14541-16.
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Trial in this case will begin August 6, 2018. The Commissioner has filed a motion (Doc. 66) to quash a subpoena *duces tecum* that petitioners (collectively, “Murfam”) served on one of his supervisory attorneys on July 17, 2018--20 days before trial. The subpoena would require the supervisory attorney not only to testify (on the subject of the Commissioner’s compliance with the supervisory approval requirement of section 6751(b)(1) in its pleading of Murfam’s penalty liabilities) but also to bring to the trial numerous documents that are not the personal documents of the supervisory attorney but are the IRS’s documents. We will grant the motion to quash.

Insofar as it seeks IRS documents, the subpoena is improper. The means for obtaining the documents of a party is a document request under Rule 72, for which the responding party has 30 days to respond. At the joint request of the parties (Doc. 23), we ordered (see Doc. 24) that the deadline for serving document requests in these cases was April 16, 2018--a date three months before Murfam’s service of the subpoena. One cannot avoid the requirements and limitations of obtaining document discovery from a party by issuing a subpoena to the party’s attorney personally.

SERVED Jul 27 2018

Insofar as it seeks the attendance of the supervisory attorney at trial to give testimony as to compliance with section 6751(b)(1), the subpoena is unnecessary. The Commissioner listed the attorney as a witness (on the subject of supervisory approval) in his pretrial memorandum (Doc. 57 at 6). The Court held a telephone conference with counsel for both parties on July 27, 2018, and during that conference both the Commissioner's trial attorney and the supervisory attorney assured the Court that the supervisory attorney will be present at trial. She will thus be available to testify without subpoena.

The Court encourages the parties to attempt to resolve, between themselves and without the further involvement of the Court, the issue of compliance with section 76751(b)(1).

It is

ORDERED that the Commissioner's motion to quash (Doc. 66) is granted.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
July 27, 2018