

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

DEBRA L. MARCH,)
)
Petitioner,)
)
v.) Docket No. 6161-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This case will be tried at the Court’s session in Denver, Colorado, beginning September 24, 2018 (less than a month away). Now pending is our order to show cause issued August 10, 2018 (Doc. 13). We will make that order absolute.

Background

On August 8, 2018, the IRS filed a motion for an order to show cause. (Doc. 12.) The motion asked the Court to order petitioner Debra L. March, to “show cause” (i.e., to explain in writing) why proposed facts and evidence should not be accepted as established, as provided in Rule 91(f). The proposed facts were stated in a stipulation that the IRS proposed, which alleges that Ms. March received in 2009 and 2010 items of income from various third parties (presumably reported to the IRS in Forms 1099 or the like) but that she did not file Federal income tax returns for those years. By our order of August 10, 2018 (Doc. 13), we granted the IRS’s motion and ordered--

that petitioner Debra L. March shall, on or before August 27, 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 Commissioner’s proposed stipulation of facts, and accompanying exhibits, should not be deemed admitted

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for purposes of the pending case. For the matters that Ms. March does admit, her response should so indicate; for the matters she does not admit, her response should explain why and should state what she 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).

Ms. March did not file a response in compliance with our order. Instead, she mailed to the Court a document entitled “Amended Petition” on T.C. Form 2, which we received on August 29, 2018. The narrative on that document does not respond or refer to the assertions in the proposed stipulation. Rather, it alleges various defects in the IRS’s handling of her case.

Discussion

Ms. March’s “Amended Petition”

For a case in this posture, an amended petition may not be filed as a matter of course, but rather only by order of the Court in response to a motion for leave, see Rule 41(a), which Ms. March did not file. However, it appears that the document was in fact intended as a response our order to show cause, so we will direct the Clerk to file it as such.

Deemed stipulations

Because Ms. March has not responded fairly to the facts alleged in the IRS’s stipulation, she has not complied with our order to show cause (Doc. 13), and we will make the order absolute, thus deeming stipulated those facts about Ms. March’s receipt of income and non-filing of returns.

If Ms. March does actually dispute those facts, then at trial she could move to be relieved from the deemed stipulations. However, in order to succeed with such a motion she would need (absent the IRS’s agreement) to present proof of the contrary facts that she alleges. If she does so move at trial, we would expect to hold that the deemed stipulations satisfy any burden of production the Commissioner would otherwise bear under section 6201(d) and would look to her to prove the facts she alleges.

Contentions about the Notice of Deficiency

Ms. March's recent filing states, "The IRS did not read or address the issues I brought up in my letters about IRS' failure to issue and mail valid Notices of Deficiency to me." At this point we do not know the specific issues to which Ms. March refers. They may be the same as (or may overlap with) the issues discussed in our order of August 10, 2018 (Doc. 14) and the Commissioner's status report (Doc. 16) submitted in response thereto. We commend those documents to Ms. March's attention.

If at trial Ms. March contends that the IRS failed to issue valid notices of deficiency, then we will entertain her contentions. If she contends that she did not receive the notices, then that may be relevant to her entitlement to dispute her liability in this "collection due process" case--but in that event she must be prepared to dispute her liability and show that it is less than what the IRS determined. If some or all of the liability issues in dispute are her receipt of the income items in the proposed stipulation and her non-filing of returns for 2009 and 2010, then she should pay particular attention to the discussion above under the heading "Deemed stipulations".

It is

ORDERED that the Clerk of the Court shall file Ms. March's "Amended Petition" that the Court received on August 29, 2018, as Ms. March's response to our Order to Show Cause (Doc. 13). It is further

ORDERED that our Order to Show Cause (Doc. 13) is hereby made absolute, and the facts in the Commissioner's proposed stipulation (in Doc. 12) are deemed stipulated. It is further

ORDERED that if Ms. March believes that it would be helpful to have a telephone conference with the Court and the IRS, then she is welcome to telephone the Chambers Administrator of the undersigned judge (at 202-521-0850) for the purpose of scheduling such a conference.

**(Signed) David Gustafson
Judge**

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