

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PRISCILLA ELIZABETH HOCHSCHILD,)
)
 Petitioner,)
)
 v.) Docket No. 18768-17.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER OF DISMISSAL AND DECISION

Now pending before the Court is an oral motion made by the Commissioner on September 24, 2018, to dismiss this case for failure to properly prosecute, to which motion we ordered petitioner Priscilla Elizabeth Hochschild to file a response by October 24, 2018. Ms. Hochschild filed no such response. We will therefore dismiss this case pursuant to Rule 123(b).

Background

The petition in this case (Doc. 1) was filed on September 5, 2017, in response to a notice of deficiency issued to petitioner Priscilla Elizabeth Hochschild on June 26, 2017, for tax year 2015. On October 25, 2017, the Commissioner filed an answer to the petition (Doc. 3), attached to which was a complete copy of the notice of deficiency for 2015 issued to Ms. Hochschild.

This case was scheduled to be tried at the Court’s session in Denver, Colorado, beginning Monday, September 24, 2018, pursuant to our “Notice Setting Case for Trial” that was served April 23, 2018 (Doc. 4), along with our “Standing Pretrial Order” (Doc. 5) explaining the process of preparing for trial.

On August 13, 2018, the Court served a Notice (Doc. 6), reminding the parties of the trial date and time of the Court’s Denver session beginning September 24, 2018. The Commissioner reminded Ms. Hochschild of the trial

(and the potential penalty for failure to appear) by way of his status report filed August 29, 2018 (Doc. 7), and in his pretrial memorandum filed September 5, 2018 (Doc. 8). During a telephone conference call that the Court held with the parties on September 14, 2018, the Court reminded Ms. Hochschild of her scheduled trial date and of her obligations as a litigant, and gave explanation and instruction about the stipulation of facts required by Rule 91. Ms. Hochschild seemed to state that she would appear at trial. Since that date Ms. Hochschild has not filed any motion or other documents with the Court.

When this case was called from the calendar in Denver, Colorado, on September 24, 2018, Ms. Hochschild did not appear, and no one appeared on her behalf. No stipulation of the parties was submitted. Counsel for the Commissioner appeared and made an oral motion to dismiss this case, pursuant to Rule 123(b), for Ms. Hochschild's failure to properly prosecute this case. In our order dated September 24, 2018 (Doc. 11), we--

ORDERED that on or before October 24, 2018, Ms. Hochschild shall serve on the Commissioner and file with the Court a response to the Commissioner's oral motion to dismiss. That response shall explain her justification or excuse for not attending the trial session and not cooperating in the stipulation process. If Ms. Hochschild intends to request to be allowed to proceed with her case, then her response shall explain the facts relevant to her tax liability that she would prove at trial and shall submit any documentary evidence on which she should rely. Failure to respond, in compliance with this order, may be deemed consent to dismissal as requested in the oral motion....

Ms. Hochschild made no filing in compliance with these instructions, and on November 7, 2018, the Commissioner filed a status report (Doc. 13).

Discussion

Rule 123(b) of the Tax Court Rules of Practice and Procedure, provides as follows:

(b) Dismissal: For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may

dismiss a case at any time and enter a decision against the petitioner....

In addition, under Tax Court Rule 149, which is entitled “Failure to Appear or to Adduce Evidence”, the Court may dismiss a case for lack of prosecution if the taxpayer inexcusably fails to appear at trial and does not otherwise participate in the resolution of his case. See Rule 149(a).

Ms. Hochschild was obligated to appear for trial on September 24, 2018; but despite the notice of April 23, 2018, setting case for trial (Doc. 4), despite the notice of August 13, 2018 (Doc. 6), instructing and reminding her to attend the trial, and despite the Court’s instructions and reminders given to her in the telephone conference with the parties held September 14, 2018, she failed to attend.

When the Commissioner orally moved to dismiss this case for lack of prosecution, and the Court ordered Ms. Hochschild to file a response no later than October 24, 2018, she filed no response. Ms. Hochschild’s noncompliance with the Court’s orders and rules prompts us to grant the Commissioner’s oral motion to dismiss, and enter decision against her pursuant to Rule 123(b).

It is therefore

ORDERED that the Commissioner’s oral motion to dismiss is granted, and this case is dismissed pursuant to Rule 123(b) for petitioner’s failure to properly to prosecute this case. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner Priscilla Elizabeth Hochschild for the tax year 2015 in the amount of 1,325.00, as set forth in the notice of deficiency dated June 26, 2017.

(Signed) David Gustafson
Judge

ENTERED: **NOV 09 2018**