

After receiving the Commissioner's status report, the Court attempted to conduct a telephone conference with the parties, but was unable to induce Ms. Hawkins to participate. The Court therefore issued an order on August 22, 2018 (Doc. 8), giving explanation and instruction about trial preparation and the stipulation of facts required by Rule 91. Our August 22, 2018, order stated:

You must appear on September 24, 2018. If you fail to appear, then your case may be dismissed for "failure to prosecute". Such a dismissal has the effect of upholding the IRS's determinations against you.

Since that date Ms. Hawkins has not filed any motion or other document with the Court. When this case was called from the calendar in Denver, Colorado, on September 24, 2018, Ms. Hawkins 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. Hawkins's failure to properly prosecute this case. The Commissioner moved the Court to enter a decision with respect to Ms. Hawkins in the amount for the tax year 2015 set forth in the notice of deficiency (attached to the petition), but reflecting a concession by the Commissioner with respect to the accuracy related penalty for tax year 2015. In our order dated September 24, 2018 (Doc. 12), we--

ORDERED that on or before October 24, 2018, Ms. Hawkins 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. Hawkins 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. Hawkins made no filing in compliance with these instructions, and on November 6, 2018, the Commissioner filed a status report (Doc. 14).

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....

Further, 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.

Ms. Hawkins 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 reminder Notice of August 13, 2018 (Doc. 7), instructing and reminding her to attend the trial, and despite the Court’s instructions and reminders given to her in our order of August 22, 2018 (Doc. 8), she failed to attend.

When the Commissioner orally moved to dismiss this case for Ms. Hawkins’s failure to properly prosecute, and the Court ordered Ms. Hawkins to file a response no later than October 24, 2018, she filed no response. Ms. Hawkins’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 prosecute this case. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner M. Sue Hawkins for the tax year 2015 in the amount of \$5,490.00, as set forth in the notice of deficiency dated August 28, 2017; and

That there is no penalty due from petitioner M. Sue Hawkins under the provisions of I.R.C. section 6662(a) for the tax year 2015.

**(Signed) David Gustafson
Judge**

ENTERED: NOV 15 2018