

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

PHARMAR FARMS, LLC, PETER FLOWERS,)
 TAX MATTERS PARTNER,)
)
 Petitioner,)
)
 v.) Docket No. 9416-18S.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)
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)

ORDER AND ORDER TO SHOW CAUSE

On February 5, 2019, respondent filed a Motion For Continuance, representing therein that “attempts to contact petitioner to ascertain his views regarding this motion were not successful.” The basis for respondent’s motion is the recently-concluded 35-day partial Government shutdown. Given such shutdown, combined with the fact that the petition in this case was only filed last Spring and that this case has not previously been continued, the Court is inclined to grant the motion. However, there is another matter of concern, which matter may provide an additional rationale for the continuance of this case.

Paragraph 1 of the Petition purports to dispute an IRS notice(s) of deficiency. Paragraphs 2 and 3 of the Petition provide further information regarding such notice(s), alleging the date thereof as March 7, 2018, the issuing IRS office as “St. Louis, Missouri 63103”, and the years(s) or period(s) for which the notice(s) was/were issued as “2014 and 2015”. Then, in paragraph 4 of the Petition an election is made to have the case “conducted under small tax case procedures”, as opposed to “under regular tax case procedures”.

No notice of deficiency is attached to the petition as an exhibit. Rather, attached as the sole exhibits are two IRS notices, each dated March 7, 2018, and

issued by an IRS office in St. Louis, MO 63103. One such notice is for the taxable (calendar) year 2014, and the other for 2015. Each such notice is denominated “TMP Notice Of Final Partnership Administrative Adjustment” (FPAA) and is accompanied by statements, schedules, and forms that typically accompany an IRS FPAA.

In his Answer to the Petition, respondent admits the allegations of paragraphs 2 through 4 of the petition. Respondent also admits the allegations of paragraph 1, but “alleges for clarification petitioner disputes two Notices of Final Partnership Administrative Adjustment (FPAA).” However, respondent does not, and has not since the filing of his Answer, questioned that this case qualifies as a “small tax case” to be “conducted under the small tax case procedures.”

IRC section 7463 sets forth procedures governing certain types of disputes, most typically actions for redetermination involving deficiencies¹ where the amount in dispute does not exceed \$50,000. Subsection (f) of section 7463 specifies additional cases in which proceedings may be conducted under such section. Such additional cases do not include partnership cases. See Rule 170, Tax Court Rules of Practice and Procedure.

Inasmuch as the present case appears to be a partnership case and not a deficiency case, it would not qualify as a “small tax case” to be “conducted under small tax case procedures”. The Court’s February 25, 2019 Chicago, IL trial session is devoted to “small tax cases”, and the undersigned, who is assigned to conduct such session, is not authorized to decide partnership cases. See IRC sec. 7443A(c).

Premises considered, it is hereby

ORDERED that respondent’s Motion For Continuance, filed February 5, 2019, is calendared for hearing at the trial session of the Court scheduled to commence at 10:00 a.m. on Monday, February 25, 2019, in Room 3908, 39th Floor of the Kluczynski Federal Building, 230 S. Dearborn Street, Chicago, Illinois 60604. It is further

ORDERED that the parties shall show cause at the hearing, why the Court should not, on its own motion, change the status of this case from a “small tax case” to a “regular tax case” and henceforth conduct all proceedings in this case

¹ A “deficiency” is a term of art. See IRC sec. 6211.

pursuant to the Court's "regular tax procedures" as applicable to partnership cases. See generally Rules 240-251, Tax Court Rules of Practice and Procedure.

This Order constitutes official notice of its contents to the parties and further notice will not be given.

(Signed) Robert N. Armen
Special Trial Judge

Dated: Washington, D.C.
February 6, 2019