

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

GUARDIAN COMMUNITY TRUST, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 23668-16X
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

This I.R.C. §7428 case is before the Court on petitioner’s motion for partial summary judgment, filed July 21, 2017. Petitioner’s motion was taken under advisement following a hearing in Washington, D.C., on October 22, 2018, at which counsel for the parties appeared were heard.

Petitioner’s motion requests relief more properly viewed as procedural rather than substantive. Specifically, petitioner seeks rulings that: (1) respondent is not entitled to a presumption of correctness with respect to the effective denial of petitioner’s application for exempt status, and (2) the burden of proof rests with respondent.

The parties have already submitted the administrative record, or at least a substantial portion of it, that was filed on April 13, 2017. At the hearing both parties recognized the possibility that the administrative record could be supplemented as the case proceeded. Neither party was in a position to predict whether the case could be submitted entirely on the basis of the administrative record, or for that matter, whether they would be in agreement as to what materials should be included in the administrative record. Petitioner had not yet decided whether to request trial in order to resolve any factual disputes that might arise.

Petitioner expressed a concern that the failure to place the burden of proof on respondent might in some manner frustrate access to respondent’s records, but as of the date of the hearing, the parties had not engaged in a meaningful

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consultation in order to determine what additional information that one party might be seeking from the other. Petitioner also suggests that placing the burden of proof on respondent would allow for a better informed decision on how to proceed. We appreciate and have seriously considered petitioner's approach but do not agree that placing the burden of proof at this stage of the proceeding is appropriate.

At various points during the hearing the Court expressed its inclination that the relief sought in petitioner's motion was premature, and that the judicial officer ultimately assigned to resolve the substantive issues might be better positioned to consider the relief petitioner now seeks after the parties have had the opportunity to further prepare the case for trial or summary disposition.

For the foregoing reasons, and taking into account the matters discussed during the hearing, it is

ORDERED that petitioner's motion is denied, without prejudice.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
February 10, 2020