

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

TAVARES DUNN,)
)
Petitioner,)
)
v.) Docket No. 712-19SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This case was previously set for trial during the New York, New York, trial session of the Court that was held on March 9, 2020. Petitioner filed a petition for review of a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 issued to petitioner on December 18, 2018, for petitioner's income tax liabilities for 2012 in which the proposed levy was sustained.

This case was called from the calendar for the New York, New York, March 9, 2020, trial session. There was not any appearance by or on behalf of petitioner. Respondent appeared and filed a Motion to Dismiss for Lack of Prosecution (motion).

In an Order To Show Cause dated March 9, 2020, the Court informed the parties that respondent's motion was held in abeyance and directed petitioner to file a response, on or before March 24, 2020, and show cause as to why respondent's motion should not be granted. On March 18, 2020, due to coronavirus (COVID-19) the Court closed, a date which fell before the due date of petitioner's response. Therefore the Court, by Order dated April 6, 2020, extended the time for petitioner to respond to its Order to Show Cause until May 15, 2020, and provided petitioner with information about how to register for e-Access. Because the Court was closed it was not receiving mail but parties who have registered with e-Access can file documents with the Court electronically. Petitioner has not registered for e-Access. If petitioner has mailed a response the Court will not be able to read it because the Court is closed and cannot access mail sent to it.

SERVED May 19 2020

The failure of a party: (1) to properly prosecute; (2) to comply with Court Rules or orders; or (3) to appear for trial, are grounds for dismissal. See Rules 104(c)(3), 123(b) and 149(a).¹ Although the Court's Rules provide for it, dismissal as a sanction is considered the harshest or most severe that a trial court can impose. See Thompson v. Housing Auth. of L.A., 782 F.2d 829, 831 (9th Cir. 1986).

Under the circumstances and at this stage of the proceedings, the Court is reluctant to impose the harsh sanction that respondent requests. The Court's reluctance, however, to impose the sanction at this time in this case should not in any way be taken as a suggestion that a party's behavior, as petitioner's behavior is described in respondent's motion, could not support such a sanction under appropriate circumstances. Premises considered, it is

ORDERED that respondent's Motion to Dismiss for Lack of Prosecution is denied, without prejudice. It is further

ORDERED that the Court's Order to Show Cause, dated March 9, 2020, is hereby discharged. It is further

ORDERED that, on or before June 1, 2020, petitioner and respondent shall call the undersigned Judge's chamber at (202) 521-0823 or email the chamber's administrator at scutter@ustaxcourt.gov and provide the Court with a current telephone number so that the Court can arrange a telephone conference to discuss the status of this case. It is further

ORDERED that the parties will participate in a telephone conference to be arranged by the Court to discuss the status of this case.

**(Signed) Diana L. Leyden
Special Trial Judge**

Dated: Washington, D.C.
May 18, 2020

¹ Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.