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Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT

WASHINGTON, DC 20217

TRACI WALTERS,)
)
Petitioner,)

v.)

Docket No. 12673-11.

COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

TRACI WALTERS,)
)
Petitioner,)

v.)

Docket No. 12788-11.

COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

BRAD WALTERS,)
)
Petitioner,)

v.)

Docket No. 20997-11.

COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER OF CONTINUANCE

These cases are on the Court's November 12, 2012 trial calendar in Dallas, Texas. Respondent had filed pretrial memos in all of them by our Court's deadline, but had received no pretrial memos or even any records from petitioners, even though they were represented by counsel. When the Court called the cases, respondent's counsel was present, but no one--either the petitioners or their

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lawyer--appeared for the other side. At the end of calendar call, the Court recalled the case and petitioners' counsel had stopped by. He appeared and asked for a continuance, despite Tax Court Rule 133 which tells those who appear before us that motions for a continuance filed 30 days or less before calendar call will ordinarily be deemed dilatory, and that continuances in general are granted only in exceptional circumstances.

These cases are exceptionally unexceptional. All three appear to involve only questions of substantiation. We must say "appear", because petitioners' counsel didn't even follow our rules and attach complete copies of the notices of deficiency to the petitions he prepared. He and his clients also failed to answer respondent's requests for a *Branerton* conference to engage in informal discovery. He didn't file pretrial memoranda in any of these cases, despite our standing pretrial order requiring him to do so. He didn't even have his clients appear at calendar call.

At the recall, he claimed that he had turned over documents substantiating some of his clients' income and expenses. Respondent acknowledged that he had, but even this production had not been done by the two-week-before-calendar-call deadline that our pretrial order lays down.

There was no good explanation for any of this--counsel's suggestion that his pretrial work was hampered by an unspecified head injury that he received in the last few days, and that required him to find an oral surgeon, doesn't begin to explain why no pretrial work had been done since the cases were filed over a year ago.

The Court will not just grant a continuance under these circumstances. Given the persistent and unexplained failures of both clients and lawyer we will instead give the parties a brief time to settle these cases, but restrict the Walters from proving their cases with additional evidence beyond what they gave to the IRS before the calendar call if they do not settle.

We are also making this otherwise unexceptional order a designated order with a citation to docket numbers 12321-09 and 12580-09, unrelated cases where petitioners' lawyer showed much the same attitude to the Court's pretrial procedure in other cases earlier this year.

He is advised to reform the way he prepares for trial in our Court.

In the meantime, it is

ORDERED that the cases at Docket Nos. 12673-11, 12788-11, and 20997-11 are consolidated for purposes of trial, briefing and opinion. It is also

ORDERED that counsel for petitioners' oral motion to continue the cases at Docket Nos. 12673-11, 12788-11, and 20997-11 is granted, and the above-entitled cases are continued. It is also

ORDERED that jurisdiction of the above-entitled cases is retained by this Division of the Court. It is also

ORDERED that on or before December 13, 2012, the parties shall submit settlement documents or counsel for respondent may file with the Court a motion for summary judgment or other appropriate motion on the basis of the documents already produced in this case by petitioners as described in the transcript of proceedings.

**(Signed) Mark V. Holmes
Judge**

Dated: Dallas, Texas
November 13, 2012