

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

DALE BREWER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 12223-17.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

Now before the Court is a motion for continuance filed by petitioner Dale Brewer. We will deny Mr. Brewer's motion, and the case will proceed to trial as scheduled at our Boston session beginning February 26, 2018. Also before the Court are motions for sanctions filed by the Commissioner. We will schedule those motions to be argued at or soon after the calendar call on February 26, 2018.

**Background**

By notice issued September 26, 2017, this case was set for trial at the Court's session in Boston beginning Monday, February 26, 2018.

**Mr. Brewer's non-production of information**

On November 14, 2017 (i.e., about three months ago), the Commissioner made an informal request for information from Mr. Brewer, but he did not provide all of the requested information.

On December 12, 2017 (i.e., about two months ago), the Commissioner served formal requests for information from Mr. Brewer. The responses to those discovery requests were due January 11, 2018; but several days before that

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Mr. Brewer terminated the representation of his prior counsel and began to be self-represented in this case. He did not provide responses to the discovery requests.

On January 12, 2018, the Commissioner filed motions asking the Court to compel Mr. Brewer to produce the requested information. The Court ordered Mr. Brewer to respond to the motion, but he did not do so. The Court granted the Commissioner's motions and ordered Mr. Brewer to produce the information. He apparently has not done so.

#### Mr. Brewer's motion to dismiss

On February 12, 2018, Mr. Brewer filed a motion to dismiss, the gist of which was that the IRS's audit of his 2013 and 2014 tax years was repetitive of an audit for prior years and that the Court should therefore grant "dismiss of my audit". On February 13, 2018, the Court denied the motion to dismiss, explaining that under section 7459(d), dismissal would have the effect of sustaining the IRS's determinations.

#### Mr. Brewer's motion for a continuance

On February 14, 2018, Mr. Brewer filed a motion for a continuance, in order "to allow me time to:

- 1) Go home to my residence in Connecticut this weekend and send my files to the court by Monday of next week (2-19-2018). I currently work in Reading PA. and only go home once or twice a month and was not scheduled to go back until the weekend of the 24th of Feb.
- 2) It will also allow me time to file a Tax Court petition under section 6213 disputing the determination so the Tax Court can issue a decision determining the deficiency. I would like to contact the Secretary of the Internal Revenue Service to get their ruling on whether portions of this audit is lawful or valid from a procedural perspective....

#### The Commissioner's motions for sanctions

Also on February 14, 2018, the Commissioner moved the Court to impose sanctions against Mr. Brewer, including the sanction of barring him from offering into evidence the information that he failed to produce to the Commissioner in response to our order granting the Commissioner's motions to compel.

### Discussion

Mr. Brewer's grounds asserted in support of his motion for a continuance do not have merit.

He explains that his work schedule prevents him from going home to get his "files" until "this weekend", whereas he had intended not to go until the weekend immediately before the trial of this case. However, Mr. Brewer has known about the scheduling of his trial for more than four months. In addition, he has been ignoring the Commissioner's requests for information for about three months and has been ignoring the Court's orders for more than a month. It was his responsibility to prepare for trial and produce information to his opponent. He is responsible for his failure to do so. Any difficulty that he has created for himself by his disregard of the Court's rules and orders is not a basis for a continuance.

His second reason (to "allow me time to file a Tax Court petition under section 6213") evidently reflects a misunderstanding of the Court's order of February 13, 2018, denying his motion to dismiss. The petition that Mr. Brewer already filed is a petition filed pursuant to section 6213. This Court will indeed in this case issue a decision redetermining his deficiencies. Our jurisdiction to do so is clear.

Mr. Brewer's suggestion that "portions of this audit" may not be "lawful or valid" is based on his contention that the IRS violated proper procedure by subjecting him to a "repetitive audit". This contention is mistaken. Section 7605(b) restricts the IRS's repetitive examinations of the same year for a given taxpayer, but he does not allege that this occurred and does not cite section 7605(b). Rather, Mr. Brewer refers to the Internal Revenue Manual ("I.R.M."). However, the I.R.M. does not have the force of law. Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner, 114 T.C. 533, 543 n.16 (2000). Moreover, although Mr. Brewer cites no specific provision in the I.R.M., the apparently pertinent provision--I.R.M. pt. 4.10.2.13 (02-11-2016)--would apply only to "an individual tax return without a Schedule C", whereas the record in this case shows that Mr. Brewer's returns did include Schedules C.

Therefore, if Mr. Brewer has supposed that he could prevail in this suit by showing facts about a prior audit, then he has been mistaken. He bears the burden to prove his income and deductions for the years at issue.

It is

ORDERED that Mr. Brewer's motion for a continuance is denied. It is further

ORDERED that either when this case is called during the calendar call on February 26, 2018, or shortly thereafter, the Court will hear argument on the Commissioner's motions for sanctions. The prior proceedings in this case enable us to say, without prejudging the motions, that their arguments are plausible and that Mr. Brewer would be well advised to immediately provide to the Commissioner the information that it has been seeking and that the Court has previously ordered him to provide. The longer he withholds information, the greater the likelihood that the Court would grant the Commissioner's motions and preclude Mr. Brewer from relying on that information.

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
February 15, 2018