

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LAURI DENISE JOHNSON &)	
DAVID MICHAEL ROBERSON,)	
)	
Petitioners,)	
)	
v.)	Docket No. 22224-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On September 10, 2018, we issued in this “collection due process” (“CDP”) case an order (Doc. 17) that denied the Commissioner’s motion for summary judgment (Doc. 6), that granted petitioners’ motion (Doc. 9) for leave to amend their petition, and that ordered both parties to show cause why this case should not be remanded to IRS Appeals for a supplemental hearing. The Commissioner stated (see Doc. 19) that he has “no objection to this case being remanded to Appeals for a supplemental hearing”; but petitioners objected (see Doc. 23) and argued, among other things, that a remand “would place petitioners back into a setting where we have absolutely no equitable standing nor an independent oversight forum from which to challenge and defend”. We will discharge our order to show cause and will not remand the case but will proceed to trial at the Court’s Boston session beginning October 15, 2018.

On September 27, 2018, the Court held a telephone conference with the Commissioner’s counsel and petitioner Lauri Denise Johnson (who stated that she had authority to speak for both petitioners). The Court observed that, where IRS Appeals has abused its discretion in the CDP process, the Commissioner does not have a right to a remand. But the Court explained for Ms. Johnson’s benefit: that many petitioners benefit from a remand (since, for example, it gives them another opportunity to seek remedies from Appeals at a supplemental hearing); that the

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remand does not deprive the taxpayer of ultimate judicial review of Appeals' supplemental determination; and that if there is no remand and the Court simply decides that Appeals' determination cannot be sustained, that decision, without more, does not bar the IRS from future collection activity, for which activity section 6330(b)(2) ("One Hearing Per Period") may preclude judicial review. Ms. Johnson nonetheless stated that petitioners do not want a remand and will be ready to proceed to trial.

The Court advised the parties that the trial will address, first, the issue of whether petitioners had a prior opportunity to challenge their underlying liability by receiving the statutory notice of deficiency ("SNOD") issued March 28, 2016. Our previous order (Doc. 17) denied the Commissioner's motion for summary judgment on this point and held that a dispute of fact exists on this issue. That issue will now be a subject of a hearing. If the evidence shows that petitioners did receive the notice, then they do not have the right to challenge the liability.

But if the evidence shows that petitioners did not receive the SNOD, then they did and do have the right to challenge the liability. The trial would then turn to that liability issue.

Ms. Johnson seemed to state that the petitioners intend to prove 16 "due process" violations committed by the IRS. We will not prejudge this issue before hearing it. But we advise petitioner that defects behind the IRS's issuance of an SNOD are usually out of bounds in a de novo consideration of a taxpayer's liability; rather, the case simply begins with the IRS's (arguably defective) determination and then effectively cures any such defects by allowing the taxpayer to demonstrate her actual tax liability. A taxpayer could not avoid her actual liability by proving that the IRS did a bad job in its examination of her tax return. On the other hand, it is true that defects committed by Appeals in the CDP process can indeed be reviewed in a CDP case like this one; but if, in a case like this one, the Court makes such a review and determines that Appeals abused its discretion by failing to follow correct procedure in considering a challenge to underlying liability, then the remedies are either (1) a remand to Appeals so that it can engage in a proper hearing (which remedy petitioners decline) or, if there is no remand, then (2) a de novo trial before the Tax Court on the issue of underlying liability. Again, the taxpayer could not avoid her tax liability simply by showing that Appeals did a bad job in the CDP hearing.

The Court explained that, if the liability issue proceeds to trial, the petitioners will have the burden of proof. It appears from the SNOD that the issues

underlying the IRS's deficiency determination are the disallowances of itemized deductions for (1) charitable contributions, (2) medical expenses, and (3) business expenses claimed as "miscellaneous deductions". The Court encouraged Ms. Johnson to promptly provide to the Commissioner's counsel all the documents on which petitioners will rely to substantiate those deductions. The Court explained that such documents, where their authenticity is not in dispute, can often be included in the parties' stipulation of facts, and that this can be a convenience at trial since it eliminates the need to offer those documents into evidence one-by-one.

It is

ORDERED that our Order to Show Cause (Doc. 17) is hereby discharged; that this case will not now be remanded to IRS Appeals but will proceed to trial as scheduled. The parties are instructed to review the Court's Standing Pretrial Order (Doc. 5, issued May 14, 2018) and to comply with it. If it appears, as the parties cooperate in preparing for trial, that they may agree on a procedure different from what is outlined above, then they should initiate a telephone conference with the undersigned judge as early as possible to discuss further proceedings.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
September 27, 2018