

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Judith L. Heavens,)	
)	
Petitioner,)	
)	
v.)	Docket No. 29155-13.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

On December 15, 2014, the Court received from petitioner a motion styled as a motion to dismiss for lack of jurisdiction. That motion was received after the Court had dismissed this case based on petitioner's failure to prosecute. This case was called for trial at the date and time set forth in the Court's notice of trial; petitioner did not appear. To address petitioner's motion, the Court would need to vacate its order of dismissal and decision. We decline to do so.

We need not reach the merits of petitioner's motion. Petitioner's motion to dismiss is predicated on respondent's alleged failure to respond to informal discovery. Petitioner never resorted to formal discovery, and had she, the proper motion would have been a motion to compel. See Rules 104(b). The motion being improper, standing alone, would be sufficient grounds upon which to deny the motion. If the motion had been styled properly, the failure to resort to formal discovery, standing alone, would have been sufficient grounds to deny that motion. If petitioner had engaged in formal discovery and filed the proper motion, the motion would have been untimely. Any such motion was due 45 days before the date set for trial. Rule 70(a)(2). The untimeliness of the motion, standing alone, would have been sufficient grounds upon which to deny the motion. If petitioner had engaged in formal discovery, filed the proper motion, and done so in a timely manner, the Court would likely reach the merits of that motion. In doing so, the Court would review the underlying discovery requests and note that it is largely, if not entirely, not the proper subject of discovery. It instead largely calls for legal conclusions and is infused with protestor rhetoric that we have rejected repeatedly. Many of the fallacies underlying the issues raised in the informal discovery were

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addressed in Waltner v. Commissioner, T.C. Memo 2014-35. If petitioner had engaged in formal discovery, filed the proper motion, and done so in a timely manner, the motion would have been denied on the merits.¹

All of this explains why we need not vacate our order of dismissal and decision. We do not vacate decisions when doing so would not yield a different result. See Chao v. Commissioner, 92 T.C. 1141, 1144 (1989). Accordingly, it is

ORDERED that petitioner's Motion To Dismiss For Lack Of Jurisdiction is denied.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
December 29, 2014

¹ Petitioner's motion and its annexed exhibit refer to informal discovery. The informal discovery might alternatively be characterized as stipulations or admissions. Regardless, petitioner never made a formal request for admissions and did not file any admissions with the Court. See Rule 90(b). Thus, whether couched as discovery, stipulations, or admissions, petitioner's motion fails.