UNITED STATES TAX COURT
WASHINGTON, DC 20217

GILIARD SCHWARTZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 11996-15S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
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ORDER AND DECISION

This is a redetermination case involving a deficiency in income tax and an accuracy-related penalty under I.R.C. section 6662(a) for the taxable (calendar) year 2012 in the amounts of $19,256.00 and $3,851.20, respectively. The deficiency in income tax is attributable to a single substantive adjustment, namely, the disallowance of a deduction for alleged moving expenses of $330,000 claimed by petitioner on her 2012 income tax return.[1]

On her 2012 income tax return (Form 1040), petitioner reported total income of $127,161 consisting of wages from employment and deducted a single "above-the-line" deduction of $330,000 for alleged moving expenses. In support of the deduction petitioner attached to her return Form 3903, "Moving Expenses", and claimed the following:

[1] Petitioner also claimed itemized deductions on Schedule A, specifically including unreimbursed employee expenses of $23,188, personal property taxes of $5,615, and interest of $5,000. Petitioner also listed on her Schedule A gifts by cash or check of $20,000, but chose not to deduct them, perhaps because her taxable income was already negative by a large amount ($-240,442). In any event, respondent did not disallow any of petitioner's itemized deductions and, as stated in the text, the deficiency is attributable solely to the disallowance of the deduction for alleged moving expenses of $330,000.

SERVED May 24 2016

Transportation and storage of goods & personal effects	$300,000
Travel (including lodging) from old home to new home	50,000
	$350,000
Amount paid by employer (& not included in wages)	- 20,000
Moving expense deduction	$330,000

On her 2012 income tax return petitioner listed a specific street address in San Antonio, Texas as her home address (hereinafter, "the specific street address" or "the specific street address in San Antonio").[2] The specific street address so listed was a single-family residence that petitioner purchased in 2004 and in which she resided at all relevant times, specifically including 2011, 2012, 2013, and 2014. The specific street address was the address to which petitioner's employer sent the Form W-2 ("Wage and Tax Statement") and to which respondent sent the February 9, 2015 notice of deficiency. Petitioner also listed the specific street address on the petition filed in the present case, and such address has been petitioner's address-of-record throughout the present case.

Not surprisingly, petitioner's 2012 income tax return was selected for examination. But, neither during the examination phase of this case, nor the administrative appeal phase of this case, nor the litigation phase of this case did petitioner ever respond to requests for substantiation of her alleged moving expenses, and petitioner essentially ignored respondent's personnel during these three phases of the case. For example, respondent's counsel found it necessary to file a Rule 91(f) motion when petitioner refused to stipulate facts or documents as required by the Court's Rules of Practice and Procedure.[3]

In due course this case was calendared for trial at the Court's trial session commencing March 21, 2016, in San Antonio, Texas. Prior thereto, respondent filed a Motion To Dismiss For Lack Of Prosecution on February 26, 2016, premised on petitioner's failure to cooperate in the preparation of the case for trial. The Court then calendared respondent's motion for hearing at the March 21, 2016 San Antonio, Texas session. In its Order setting the motion for hearing the Court

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[2] For privacy reasons the exact address is not provided. Cf. Tax Court Rule 27.

[3] The Court granted respondent's Rule 91(f) motion and ordered petitioner to show cause that the matters set forth in respondent's motion should not be deemed admitted for purposes of this case. The Court never received a response from petitioner, and the Court made its order to show cause absolute.

also advised petitioner about the provisions of I.R.C. section 6673(a)(1). In that regard the Court commented that if petitioner's claimed moving expenses of $330,000 "appear to be fictitious", as asserted by respondent in his motion, then one might conclude that a case built on a fictitious claim is frivolous or groundless and/or instituted or maintained primarily for delay, such that an award under I.R.C. section 6673(a)(1) would be appropriate and justified.

Prior to the hearing, respondent filed a Supplement to his motion and attached thereto extensive documentation. Such documentation included (1) records showing that petitioner changed her address to the specific street address in San Antonio in early 2005 and did not change it thereafter; (2) statements and records from petitioner's employer showing that the employer never reimbursed petitioner for moving expenses (or, for that matter, any other expenses) and that the employer consistently used the specific street address in San Antonio as petitioner's home address since hiring her in 2011; (3) records from the Bexar Appraisal District showing that petitioner maintained a homestead exemption from 2006 through 2015 on the residence located at the specific street address in San Antonio; and (4) records showing that petitioner also claimed moving expenses on her 2011 income tax return as follows:

Transportation and storage of goods & personal effects	$ 7,500
Travel (including lodging) from old home to new home	3,400
Moving expense deduction	$10,900

Respondent concluded the textual part of his Supplement with the statement that "[i]n summary, all evidence available to Respondent indicates Petitioner's claimed moving expenses in the amount of $330,000.00 in tax year 2012 are fictitious."

Pursuant to notice, respondent's motion to dismiss was called for hearing on March 21, 2016, in San Antonio, Texas. Petitioner appeared, as did counsel for respondent. Petitioner was given the opportunity of consulting with a pro bono attorney from the Tax Section of the Texas State Bar Association who was in attendance at the session to assist pro se taxpayers such as petitioner. The matter was then recalled several times. Ultimately petitioner, with pro bono counsel present, stated that she did not wish to try her case, that she would not oppose the granting of respondent's motion to dismiss, but that she would not concede the factual allegations made in the motion regarding the fictitious nature of the alleged moving expenses. Petitioner expressly acknowledged that she understood the consequences of the Court granting the motion, i.e., that she would be liable for the determined deficiency in tax and accuracy-related penalty, as well as statutory

interest. The Court then stated at length that it would grant respondent's motion and also issue an order for petitioner to show cause why a penalty under I.R.C. section 6673 should not also be imposed. In that regard the Court made clear that such penalty would not be imposed if petitioner were able to demonstrate that there was some plausibility or some rationality to the $330,000 moving expense deduction that she had claimed, but that if petitioner were not able to do so then the Court would impose a penalty under I.R.C. section 6673 in an amount not to exceed $25,000. Petitioner was expressly advised by the Court that if she failed to respond to the show cause order, a penalty under I.R.C. section 6673 would be imposed.

By Order And Order To Show Cause dated March 21, 2016, the Court formally granted respondent's Motion To Dismiss For Lack Of Prosecution[4] and ordered petitioner to show cause in writing, on or before April 25, 2016, why the Court should not impose a penalty on her pursuant to the provisions of I.R.C. section 6673(a) for instituting or maintaining the instant proceeding primarily for delay or for espousing therein a frivolous or groundless position.

Petitioner did not respond to the Court's March 21, 2016 order to show cause.

Based on the record, the Court concludes that petitioner instituted or maintained the instant proceeding primarily for delay, or espoused therein a frivolous or groundless position, such that a penalty under I.R.C. 6673(a) is warranted.

Premises considered, and in order to give effect to the foregoing, it is hereby

ORDERED that so much of the Court's Order And Order To Show Cause dated March 21, 2016, that directed petitioner to show cause in writing why the Court should not impose a penalty on her pursuant to the provisions of I.R.C. section 6673(a) for instituting or maintaining the instant proceeding primarily for delay or for espousing therein a frivolous or groundless position is made absolute. It is further

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[4] In granting respondent's motion the Court deferred entry of decision, stating that a decision would be entered in due course with respect to the deficiency and accuracy-related penalty for 2012 as determined in the February 9, 2015 notice of deficiency.

ORDERED AND DECIDED that, consistent with the first ORDERED paragraph of the Court's Order And Order To Show Cause dated March 21, 2016, granting respondent's Motion To Dismiss For Lack Of Prosecution, filed February 26, 2016, and supplemented March 11, 2016, petitioner is liable for a deficiency in income tax and an accuracy-related penalty under I.R.C. section 6662(a) for the taxable (calendar) year 2012, as set forth in the notice of deficiency dated February 9, 2015, in the amounts of $19,256.00 and $3,851.20, respectively. It is further

ORDERED AND DECIDED that petitioner is liable for a penalty pursuant to I.R.C. section 6673(a) in the amount of $10,000.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Entered: **MAY 24 2016**