UNITED STATES TAX COURT
WASHINGTON, DC 20217

KATRINA E. TAYLOR & AVERY TAYLOR,	)	
	)	
Petitioners,	)	
	)	**CT**
v.	)	Docket No. 20967-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
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ORDER AND DECISION

This case was called from the calendar for the Trial Session of the Court at Washington, DC on June 4, 2018. Since filing their petition, petitioners have refused to participate in the resolution of this case in any meaningful way. When this case was called at the trial session, there was no appearance by or on behalf of petitioners. Counsel for respondent appeared and filed a Motion for Default Judgment and a Memorandum in Support of Motion for Default Judgment. Petitioners have failed to respond to respondent's motion. Petitioners have admitted or are deemed to have admitted all salient facts, and we shall accordingly grant respondent's Motion for Default Judgment.

Procedural Background

Respondent issued a notice of deficiency with respect to petitioners' 2013 tax year, determining an income tax deficiency of $14,186 and a section 6662(a)[1] accuracy-related penalty of $2,837.20. These amounts relate to respondent's disallowance of car and truck expenses claimed by petitioners on a Schedule C,

[1]All section references are to the Internal Revenue Code, as amended, in effect for 2013, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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Profit or Loss from Business, attached to petitioners' 2013 Form 1040, U.S. Individual Income Tax Return, and will be discussed more fully infra.

Petitioners timely filed a petition in this Court on September 26, 2016, and respondent filed his answer on November 14, 2016, wherein he denied petitioners' substantive allegations. By leave of the Court, respondent filed an amended answer on June 20, 2017, wherein he raised two affirmative defenses. First, respondent raised a section 6663 civil fraud penalty of $10,639.50. Respondent asserts that petitioners falsely claimed business related car and truck expenses to artificially reduce their adjusted gross income from $104,720 to $30,690, so as to fraudulently claim an earned income credit of $4,147. Second, respondent raises the 10-year ban on claiming the earned income credit pursuant to section 32(k)(1)(B)(I) as a result of their improper claim of an earned income credit.

Petitioners did not file a reply to respondent's amended answer; consequently, respondent filed a Motion for Entry of Order that Undenied Allegations be Deemed Admitted Pursuant to Rule 37(c). On October 10, 2017, the Court issued an Order granting respondent's motion; petitioners are therefore deemed to have admitted all of the statements reflected in respondent's amended answer, including the affirmative allegations with respect to the civil fraud penalty and the 10-year ban on claiming the earned income credit.

On March 6, 2018, respondent filed a Motion to Take Judicial Notice, requesting the Court to take judicial notice of the distances between petitioners' home and the various addresses to which petitioners allege Katrina E. Taylor (Mrs. Taylor) drove during the year for business activities. In his motion, respondent asserts that the travel logs provided by petitioners are unreliable and overstate the distances traveled. Attached to respondent's motion are a series of documents taken from Google Maps which show the distance and driving time for various routes between petitioners' home and Mrs. Taylor's purported business destinations. Petitioners failed to respond to respondent's motion, and by Order dated April 13, 2018, the Court granted respondent's motion, taking judicial notice of the information contained therein as facts, the accuracy of which cannot reasonably be questioned.

Respondent prepared a joint stipulation of facts, but petitioners refused to sign it. On April 19, 2018, respondent filed a Motion for Order to Show Cause Why Proposed Facts and Evidence Should not be Accepted as Established Pursuant to Rule 91(f). By Order dated April 24, 2018, the Court ordered petitioners to respond to respondent's motion. Petitioners failed to respond to

respondent's motion, and by Order dated May 17, 2018, the Court's April 24, 2018 Order to Show Cause was made absolute, in that the facts and evidence set forth in respondent's proposed stipulation of facts were deemed to be established for purposes of this case.

Because of the above mentioned Orders, the facts in this matter are now undisputed. For completeness, we recite the facts as established through our Orders.

Factual Background

Petitioners timely filed their 2013 Form 1040. They reported $105,914 in wages, of which $55,033 was earned by Mrs. Taylor from her employment at Jefferson Memorial Hospital.[2] The Schedule C attached to petitioners' tax return purports to show financial data from Mrs. Taylor's business (called both LTC Billing Solutions and LTC Healthcare Billing Solutions on the Schedule C, which we herein shall call LTC). The Schedule C reports no gross receipts or sales or any other income. It does, however, report advertising expenses of $290, car and truck expenses of $73,740, and calculates a net loss of $74,030. Also attached to the 2013 Form 1040 was a Form 4562, Depreciation and Amortization (Including Information on Listed Property), wherein petitioners represent that they used two vehicles for business purposes during 2013, and that a total of 130,513 miles were driven for business purposes. Neither vehicle is described on the form, but the form does state that Vehicle 1 was driven 65,212 miles, and vehicle 2 was driven 65,301 miles. On line 24a, in response to the question "Do you have evidence to support the business/investment use claimed?", petitioners checked the box marked "no".

Petitioners' business expense deductions artificially reduced their adjusted gross income to $30,690. This amount of adjusted gross income, combined with the fact that petitioners had three minor children during 2013, qualified them for the earned income credit. Petitioners duly attached a Schedule EIC, Earned Income Credit Qualifying Child Information, to their 2013 Form 1040, claiming an earned income credit of $4,417.

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[2]We found Mrs. Taylor to be a full-time employee at Jefferson Memorial Hospital during the 2012 tax year in Taylor v. Commissioner, T.C. Memo. 2017-99, 2017 WL 2390982, at *3. As her salary was greater in 2013 than it was in 2012, we conclude that she was a full-time employee for tax year 2013.

The Internal Revenue Service (IRS) opened an examination of petitioners' 2013 tax return, focusing on petitioners' alleged car and truck expenses. When the IRS auditor asked for documentation supporting their car and truck expense deductions, petitioner submitted two versions of a log purporting to show the miles driven in 2013 in connection with LTC. The purported logs, which were not prepared contemporaneously with Mrs. Taylor's purported travel, state that Mrs. Taylor drove 130,513 miles on LTC business: she allegedly drove a 2004 Cadillac truck 41,483 miles and drove a 2006 BMW 89,030 miles. The logs are demonstrably unreliable. For example, when petitioners traded in the 2004 Cadillac truck, Mrs. Taylor signed an odometer disclosure statement which reported the odometer reading at the time of sale to be 102,345 miles; according to the logs, the truck's December 23, 2013 year end odometer reading was 154,990 miles. Similarly, when petitioners traded in the 2006 BMW, the odometer disclosure statement reported the odometer reading to be 91,333 miles; the purported logs stated that as of December 17, 2013, the odometer read 186,880 miles.

Moreover, the distances traveled as listed in the logs do not accurately represent the distances between petitioners' home and the purported business destinations, as demonstrated by the exhibits attached to respondent's Motion to Take Judicial Notice. We are satisfied that the mileage reported in the logs is inflated. For example, the logs state that Mrs. Taylor drove the 2004 Cadillac truck 1,376 miles and drove the 2006 BMW 701 miles, a total of 2,077 miles, on September 22, 2013. As respondent points out, the driving distance between Manhattan, New York, and Los Angeles, California, is approximately 2,800 miles and "[a]t a constant speed of 70 miles per hour ("MPH") it would take 29.7 hours to drive 2,077 miles." Further, the logs report trips of 1,200 miles to 1,800 miles for other days.

Discussion

Rule 123(a) provides that the Court may hold a party in default if he/she has "failed to plead or otherwise proceed as provided by these Rules or as Required by the Court." Rule 123(b) grants the Court broad discretion to dismiss the case "[f]or failure of a petitioner properly to prosecute or comply with these Rules or any order of the Court or for other cause which the Court deems sufficient." In other cases, we have construed Rule 123 liberally to permit entry of a judgment of default or dismissal consistently with our sound discretion and the interests of justice. See Stringer v. Commissioner, 84 T.C. 693, 706 (1985), aff'd without published opinion, 789 F.2d 917 (4th Cir. 1986); Hill v. Commissioner, T.C.

Memo. 2015-172. We have entered judgments of default or dismissal where a taxpayer, among other things: (1) unreasonably refused to stipulate to facts or documents, Long v. Commissioner, 742 F.2d 1141 (8th Cir. 1984); (2) failed to comply with Court-ordered discovery, Rechtzigel v. Commissioner, 79 T.C. 132 (1982), aff'd per curiam, 703 F.2d 1063 (8th Cir. 1983); or (3) failed to appear at trial, Ritchie v. Commissioner, 72 T.C. 126 (1979).

Petitioners have demonstrated their refusal to participate in this case in numerous ways. As we have previously stated: "If a taxpayer does not think well enough of his case to defend it where the government has the burden of proof, this Court should default him. To hold a trial in a case abandoned by the taxpayer is at best an indulgence of archaic manners and at worst an insult to the taxpayers who have a rightful claim to the Court's time." Bosurgi v. Commissioner, 87 T.C. 1403, 1408 (1986).

Respondent's determinations in a notice of deficiency are generally presumed correct and taxpayers have the burden of proving otherwise. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933). However, respondent bears the burden of proof with respect to respondent's imposition of the section 6663 fraud penalty and with respect to his invocation of the section 32(k)(1)(B)(I) 10-year ban on claiming the earned income credit. With respect to the section 6663 fraud penalty, respondent bears the burden of proof by clear and convincing evidence. See sec. 7454(a); Rule 142(b). With respect to the 10-year ban on claiming the earned income credit under section 32(k)(1)(B)(I), respondent bears the burden of proof by a preponderance of the evidence. See Rule 142(a). Respondent may satisfy these burdens by relying on petitioners' deemed admissions and on facts deemed established. See Rule 90(c); Nis Family Trust v. Commissioner, 115 T.C. 523, 528 (2000); Hill v. Commissioner, T.C. Memo. 2015-172.

On the record before us, it is clear that petitioners have "failed to plead or otherwise proceed" within the meaning of Rule 123(a). They failed to cooperate with respondent in stipulating facts or preparing for trial and they have repeatedly refused to provide discovery. They have ignored numerous Court Orders and they failed to appear for trial, of which they were given sufficient advanced notice.

After reviewing the entire record, we conclude that the facts deemed to have been established, combined with the affirmative allegations of fraud, and the affirmative allegations that petitioners improperly claimed the earned income credit and should be subject to the 10-year ban on claiming the earned income

credit that petitioners are deemed to have admitted under Rule 90(c), collectively satisfy respondent's burdens of production and proof as to each and every issue in this case. We therefore will grant respondent's Motion for Default Judgment and enter a decision against petitioners.

In the light of the foregoing, it is

ORDERED that respondent's Motion for Default Judgment is granted. It is further

ORDERED and DECIDED that there are deficiencies and penalties due from petitioners as follows:

Year	Deficiency	Penalty Under Sec. 6663[3]
2013	$14,186	$10,639.50

It is further

ORDERED and DECIDED that the 10-year ban for claiming the earned income credit, pursuant to section 32(k)(1)(B)(I), is imposed as sought in respondent's amended answer.

(Signed) Julian I. Jacobs
Judge

ENTERED: **JUL 26 2018**

[3]In respondent's Motion for Default Judgment, respondent seeks imposition of the sec. 6662 accuracy-related penalty as an alternative penalty should we decline to impose the sec. 6663 civil fraud penalty. As we impose the sec. 6663 civil fraud penalty, we shall deny as moot the sec. 6662 accuracy-related penalty.