

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KAFIL H. TUNSILL,)
)
 Petitioner,)
)
 v.) Docket No. 9585-18.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER OF DISMISSAL AND DECISION

This case is before the Court on respondent’s Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted (motion to dismiss), filed July 6, 2018.

Petitioner resided in Florida at the time the petition underlying this proceeding was filed with the Court.

Background

On February 16, 2018, respondent issued to petitioner a notice of deficiency for 2014. Respondent determined that petitioner was liable for a deficiency in income tax in the amount of \$2,348. The notice of deficiency was premised principally on a determination that petitioner failed to establish that the business expenses reported on Schedule A, Itemized Deductions, were paid or incurred during 2014 and that the expenses were ordinary and necessary for his business.

On May 15, 2018, petitioner timely filed a petition with respect to the February 16, 2018, notice of deficiency for 2014. In the petition, under the heading “Disagreement” petitioner stated:

For the record: I am making a special appearance before the court without prejudice and without waiving any rights, remedies or defenses, statutory or procedural. I disagree with the IRS determination because they have not:

1. Properly declared the issue, but rather made an erroneous presentment in the form of a Notice of Deficiency.
2. I'm demanding that the IRS file a 1099 OID form to properly identify the payer and recipient of the funds.
3. I also demand that they file a Bid Bond, Performance Bond, and Payment bond, to show that they have properly bonded their claim.
4. Last but not least, I demand that they produce the contract that I am in violation of, being that this is a commercial crime. I'm invoking my 4th and 5th amendment rights.

Under the heading "Facts Supported by Law" petitioner provided references to the Code of Federal Regulations, the Fifth Amendment, and the Uniform Commercial Code. Petitioner concluded the petition by stating, "[i]n conclusion, KAFIL H TUNSILL is being accused of a commercial crime (offense against revenue laws). In pursuant [sic] to law, the person making the claim must register their claim to make a proper assessment, so that there can be a demand for performance. Without a demand for performance, there can be no neglect. Without neglect, there can be no crime. Without a crime, there can be no court proceeding."

On July 6, 2018, respondent filed the motion to dismiss. By order dated July 13, 2018, petitioner was directed to file an objection, if any, to respondent's motion to dismiss and petitioner was permitted to file a proper amended petition that contained clear and concise assignments of each and every error that petitioner alleges to have been committed by the Internal Revenue Service in the determination of the deficiency in dispute in this case, and clear and concise lettered statements of the facts on which petitioner bases the assignments of error. Petitioner did not file an objection to respondent's motion to dismiss or file an amended petition or otherwise make any assignments of error or supporting allegations of fact that relate to the specific determinations contained in the notice of deficiency.

On November 5, 2018, this Court held a conference call with the parties. During the conference call, the Court explained Rules 34(b)(4) and (5),¹ which require petitioner to provide clear and concise assignments of error and lettered

¹Unless otherwise indicated, section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

statements of the facts to support the assignments of error. Petitioner stated that he understood his petition did not comply with the requirements of the Tax Court Rules of Practice and Procedure and that his case was likely to be dismissed.

On November 5, 2018, respondent's motion to dismiss was assigned to the undersigned for disposition.

Discussion

Rule 34(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and additions to tax in dispute. See Gordon v. Commissioner, 73 T.C. 736,739 (1980). Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982).

The failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for the Court to hold such party in default, either on the motion of another party or on the initiative of the Court. Rule 123(a). Similarly, the failure of a petition to conform to the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a)(1), 123(b).

The petition in this case does not satisfy the requirements of Rule 34(b)(4) and (5). Petitioner does not allege any fact in support of any justiciable claim. As for an assignment of error petitioner refers to the Uniform Commercial Code and asserts that he believes he is being accused of violating a commercial crime. Such assertion does not present a justiciable claim. Dismissal of this matter likewise comports with principles governing burden of proof, insofar as such burden on the deficiency lies with petitioner under the general premise of Rule 142(a) and has not shifted pursuant to section 7491(a). Because the allegations and statements contained in the petition fail to give rise to any justiciable issue and petitioner has failed to take the opportunity to cure the defective petition, respondent's motion to dismiss will be granted. See Scherping v. Commissioner, 747 F.2d 478 (8th Cir. 1984); Rules 34(a)(1), 123(b); see also Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986).

Premises considered, it is

ORDERED that, respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed July 6, 2018, is granted, and this case is dismissed on the stated ground. It is further

ORDERED AND DECIDED that, there is a deficiency in income tax due from petitioner for 2014 in the amount of \$2,348.

**(Signed) Diana L. Leyden
Special Trial Judge**

ENTERED: **NOV 09 2018**