

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

PAUL L. BENNETT & DARYL A. BENNETT,)
)
 Petitioners,)
)
 v.) Docket No. 9655-18S.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER & DECISION

Now before us is the Commissioner’s motion to dismiss for lack of prosecution. Petitioners Daryl A. and Paul L. Bennett filed an opposition. We will grant the motion and enter decision sustaining the deficiency determination at issue in this case.

Background

In 2015 Ms. Bennett earned income that was reported to the IRS on a Form 1099 filed by First Data Reporting Services, LLC. However, Ms. Bennett did not report that income on the Federal income tax return that the Bennetts filed for 2015. According to the petition (Doc. 1), Mrs. Bennett had an “illness which left her with only time to run her business” and evidently no time to prepare a Schedule C reporting that income and the related deductions; and even thereafter she “didn’t have any bookkeeping support to get her income and expenses together to amend our 2015 return which would have the Sch C on it which included the 1099k income”.

On February 12, 2018, the IRS issued to the Bennetts a Statutory Notice of Deficiency (“SNOD”), which is attached to the petition, determining a deficiency of tax of \$1,477 and a negligence penalty of \$295. (The penalty has since then been conceded by the Commissioner.) On May 12, 2018, the Bennetts timely mailed their petition to this Court. During the pendency of this case, they sent to

IRS Appeals (1) a Schedule C that seems to report income in a total (\$15,189) that is greater than the amount (\$5,254) that the SNOD reflects and (2) papers that are not self-explanatory but that the Bennetts evidently contend substantiate expenses of Ms. Bennett's business in an amount (\$18,475) that exceeds the income. (See Doc. 13, Ex. A.)

On October 12, 2018, the Court served the parties notice (Doc. 4) that "this case is set for trial at the Trial Session beginning at 10:00 AM on Monday, March 11, 2019" at the Tax Court's courtroom in Boston. The notice stated: "The calendar for that Session will be called at that date and time, and the parties are expected to be present and to be prepared to try the case. Your failure to appear may result in dismissal of the case and entry of decision against you." (Emphasis added.)

On February 1, 2019, the Court issued a notice (Doc. 5) reminding the parties of the trial date and stating: "If . . . you fail to appear at the Trial Session, the case may be dismissed." (Emphasis added.)

When the case was called as noticed on March 11, 2019, the Bennetts did not appear. The Commissioner filed his "Motion to Dismiss for Lack of Prosecution" (Doc. 7), and we issued an order (Doc. 8) requiring the Bennetts to file a response. They did so (see Doc. 10), and the Commissioner filed a reply (Doc. 12).

Discussion

The Internal Revenue Service is charged with the important responsibility of determining, assessing, and collecting taxes. But its exercise of that responsibility is limited in various ways. A taxpayer who receives from the IRS a statutory notice of deficiency has the power to suspend the IRS's activity, in order to have an opportunity to prove before the Tax Court that the IRS's determination is incorrect, see sec. 6213(a); and that is what the Bennetts did when they filed their petition with this Court. They halted the IRS in the performance of its function. This was their right, but the exercise of that right obliged them to do their part as litigants. They have not done so.

The Court duly scheduled this case for trial, sent the Bennetts notice of the trial date about 5 months before the trial, and then sent them a reminder about 5 weeks before the trial. If the Bennetts had testimonial or documentary evidence

that could prove their entitlement to deductions, this was their opportunity to present it.

However, when the opportunity for their day in court arrived, the Bennetts did not appear. Ms. Bennett's reply explains their non-appearance as follows:

[A]t this point I felt totally alone, and the thought of going to court, alone, and not fully prepared, like a lawyer would be, made me fearful.... My husband felt defeated, as well, and was quick to concede, even though we don't have that amount available to pay.

We understand that the self-represented petitioner who is not a lawyer may feel uneasy about appearing in court. This is why Congress made provision in section 7463 for special rules to be promulgated for so-called "small tax cases" (see Tax Court Rules 170-174). Such cases are "conducted as informally as possible". Rule 174(b). The Bennetts elected "small tax case" procedures, and we were ready to operate in accordance with them on March 11, 2019--but the Bennetts did not appear.

As we noted above, the filing of a petition essentially halts the IRS's collection activity in order to let the Tax Court trial occur. But if the taxpayer fails to appear for that trial, it would make little sense to empower her thereby to squelch the IRS indefinitely--and she does not have that power. Rather, Rule 123(b) provides:

For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner.

Non-appearance at trial is the quintessential "failure . . . to prosecute" a case. The reason for the Bennett's non-appearance was not sickness or accident or ignorance but rather how the Bennetts "felt". This was not a valid excuse for their failure to appear. It is therefore

ORDERED that the Commissioner's motion to dismiss for lack of prosecution is hereby granted, for the reasons stated in that motion and in this order. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioners Paul L. Bennett and Daryl A. Bennet for tax year 2015, in the amount of 1,477, as set forth in the notice of deficiency dated February 12, 2018; and

That there is no penalty due from petitioners Paul L. Bennet and Daryl A. Bennet under I.R.C. section 6662(a) for the tax year 2015.

**(Signed) David Gustafson
Judge**

ENTERED: **APR 26 2019**