

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

MARIA HEBERT, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 14078-18.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER OF DISMISSAL AND DECISION**

Before the Court is respondent's Motion to Dismiss for Lack of Prosecution, which he filed after petitioner, for the second time, failed to appear for trial. We shall grant respondent's motion and enter a decision determining a reduced deficiency, reflecting concessions that respondent has made on the basis of documentation that petitioner has supplied to him.

Petitioner did not file a Federal income tax return for 2014. The IRS prepared a substitute for return on the basis of information received from third parties, which showed that petitioner during 2014 had received taxable wages of \$157,206. After allowing petitioner a standard deduction and one personal exemption, the IRS determined a deficiency of \$36,584. On April 16, 2018, the IRS sent her a notice of deficiency reflecting this amount, as well as additions to tax under sections 6651(a)(1), 6651(a)(2), and 6654. Petitioner filed a timely petition, and this case was calendared for trial on April 15, 2019, in Washington, D.C.

Petitioner did not respond to IRS requests seeking informal discovery. Accordingly, on February 28, 2019, respondent filed a Motion to Compel Production of Documents and a Motion for Order to Show Cause Why Proposed Facts and Evidence Should Not Be Accepted as Established Pursuant to Rule 91(f). On March 6, 2019, we granted respondent's motions, directing petitioner to provide the requested documents by April 5, 2019, and to show cause by the same date why respondent's proposed facts and evidence should not be accepted as established.

Petitioner did not file a timely response to our Order. Instead she filed, on April 12, 2019, a document captioned “Motion to Dismiss,” to which she attached a Form 1040, U.S. Individual Income Tax Return, for 2014, with signatures dated April 8, 2019. This return reported wages of \$157,206 for 2014, as respondent determined in the notice of deficiency. By way of offset the return claimed itemized deductions of \$27,362 and a loss of \$25,204 on Schedule C, Profit or Loss from Business.

Three days later, on April 15, 2019, this case was called from the calendar of the Court’s Washington, D.C., trial session. No appearance was made by or on behalf of petitioner. Respondent made an oral motion to dismiss for lack of proper prosecution. We took that request under advisement.

After multiple efforts to contact petitioner, we succeeded in convening a conference call with the parties on April 19, 2019. Following that call we issued an order denying without prejudice respondent’s motion to dismiss for lack of prosecution, retaining jurisdiction of the case, and directing petitioner to provide to respondent’s counsel, on or before May 31, 2019, documents to substantiate the itemized deductions and Schedule C loss reported on the Form 1040 that she had executed on April 8, 2019.

On May 31, 2019, petitioner filed a motion for extension of time to enable her to issue subpoenas to third parties seeking additional documents. We again granted her request. On August 7, 2019, petitioner informed the chambers of the undersigned that all of the subpoenaed documents had been received or were expected to be received shortly. By order dated September 23, 2019, we directed petitioner to submit to respondent’s counsel, by October 25, 2019, all documents that she would intend to use to support her claimed deductions if this case went to trial. We noted that, if this case needed to be tried, we anticipated setting it for trial during the second half of February 2020.

On November 22, 2019, respondent filed a status report representing that he had received some documentation from petitioner, which was inadequate to substantiate most of her claimed deductions, but that petitioner promised to supply additional substantiating documents. By Order dated December 2, 2019, we ordered petitioner to provide to respondent’s counsel, by December 20, 2019, “all documents on which petitioner relies in support of her claimed deductions.” We informed the parties that this case would be set for trial on February 24, 2020, unless either party notified the Court, by December 20, 2019, of an objection to that trial

date. Neither party notified the Court of any objection, and the case was set for trial on February 24, 2020.

When the case was called from the calendar on February 24, 2020, no appearance was made by or on behalf of petitioner. Counsel for respondent appeared and announced ready for trial. He represented that he had telephoned petitioner the previous Friday and spoken to her husband. Her husband stated that petitioner intended to submit additional documentation; that petitioner had retained, on February 20, 2020, a certified public accountant to assist her in this case; and that neither he nor petitioner intended to appear for trial because he had a medical appointment on February 24. Respondent's counsel informed petitioner, via voice message, that he would seek to dismiss this case for lack of prosecution if she failed to appear for trial.

On February 27, 2020, petitioner filed an unsigned, undated document that we captioned as Petitioner's Status Report. Petitioner asserted that the case is "not ready for trial" and that "it's been a bit slow going" because her husband "has been ill." She offered no explanation as to why she failed to appear for trial or otherwise comply with the orders and instructions of this Court.

In his motion to dismiss for lack of prosecution, respondent indicates that he has reviewed the documentation petitioner submitted prior to December 20, 2019, the deadline the Court set for submission of substantiating documents. Respondent concluded, on the basis of those documents, that petitioner has substantiated itemized deductions for state and local income taxes, property taxes, and charitable contributions for 2014 in the amounts of \$8,609, \$904, and \$27, respectively. Respondent asks that the Court enter decision reflecting a reduced deficiency consistent with these concessions.

Rule 123(b) of this Court's rules provides that, "[f]or failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court \* \* \* the Court may dismiss a case at any time and enter a decision against the petitioner." 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). Whether to grant a motion to dismiss for lack of proper prosecution lies within the sound discretion of the Court. Tax Court Rule 50(b); Levy v. Commissioner, 87 T.C. 794, 803 (1986). We regularly exercise this discretion to enter judgments of default or dismissal where a taxpayer has failed to appear for trial. See Ritchie v. Commissioner, 72 T.C. 126 (1979); Carlo v.

Commissioner, T.C. Memo. 2005-165; Bixler v. Commissioner, T.C. Memo. 1996-329; Bond v. Commissioner, T.C. Memo. 2012-31.

We find that the interests of justice support dismissal. Petitioner has repeatedly failed to comply with this Court's orders and Rules. She has failed to appear for trial on two separate occasions. In neither case did she file a motion for continuance establishing good cause why the case should be continued. See Tax Court Rule 133. If it is true that petitioner's husband scheduled a medical appointment for February 24, it was incumbent upon petitioner to file a motion for continuance explaining: (1) whether that was an emergency appointment; (2) if not, why it was scheduled for the day of trial; and (3) why a medical appointment for her husband, who is not a party to this case, prevented her from appearing for trial.

Although the status report petitioner filed on February 27 was three pages long, she offered no explanation whatever as to why she was unable to appear for trial. It may be that this case, from petitioner's perspective, "is not ready for trial." But that is only because she has repeatedly failed to comply with our orders that she supply to respondent's counsel, by the deadlines we established, documents that would substantiate her claimed deductions.

The only dispute remaining in this case concerns petitioner's entitlement to deductions, as to which she has the burden of proof. Respondent has considered all of her documentation, and we see no error in his computation of itemized deductions. Because petitioner would be precluded by our December 2, 2019, Order, from introducing new substantiating documents into evidence at trial, a trial of this case would serve little or no purpose in any event. Accordingly, it is

ORDERED that respondent's Motion to Dismiss for Lack of Prosecution, filed February 24, 2020, is granted, and this case is dismissed for lack of proper prosecution by petitioner. It is further

ORDERED and DECIDED that there are deficiencies in income tax and additions to tax due from petitioner in the following amounts:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax I.R.C. §</u>		
		<u>6651(a)(1)</u>	<u>6651(a)(2)</u>	<u>6654</u>
2014	\$35,529.00	\$7,994.03	\$7,283.45	\$637.92

**(Signed) Albert G. Lauber**  
**Judge**

ENTERED: **FEB 28 2020**