

UNITED STATES TAX COURT
WASHINGTON, DC 20217 PA

JOHN JOON-IL KIM,)
)
 Petitioner,)
)
 v.) Docket No. 6160-18.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On May 19, 2020, the Commissioner filed a “Motion to Dismiss for Failure to Properly Prosecute” (Doc. 16), which alleges (at paras. 59-61) a history of non-response and non-communication by petitioner. The bulk of the motion, however, consists of assertions about the amount of petitioners’ correct tax liability in support of a “claim for increased deficiency” (para. 55). It is not unusual to see, in a motion to dismiss for failure to prosecute, a request for a decision redetermining a deficiency in a decreased amount, reflecting partial concession by the Commissioner. However, the undersigned judge believes that a claim to increase the amount of the deficiency is best stated in respondent’s original answer or in an amended answer that respondent moves for leave to file, in compliance with Rule 41(b). In this instance the “claim” is inserted in a motion to dismiss for failure to prosecute, and is contrary to the spirit, if not the letter, of Rule 54(b) (forbidding “joinder of motions”). We would entertain a proper motion to amend the answer to assert an increased deficiency or a motion to dismiss for failure to prosecute, but not both simultaneously. It is therefore

ORDERED that respondent’s motion to dismiss for failure to properly prosecute (including its claim for an increased deficiency) is denied without prejudice. It is further

SERVED May 22 2020

ORDERED that, no later than June 26, 2020, petitioner John Joon-II Kim shall file a status report with the Court. In it he shall confirm or correct his mailing address and telephone number, and he shall respond to paragraphs 59-61 of respondent's motion (alleging that Mr. Kim failed to return telephone calls and failed to respond to letters). He should begin immediately to communicate with his opponent, the IRS's attorney, Amy Chang.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
May 22, 2020