

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

JOSEPH A. INSINGA,)
)
Petitioner,)
)
v.) Docket No. 16575-16W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL

This is a “whistleblower” case filed pursuant to I.R.C. section 7623(b). Now pending before the Court is a motion (Doc. 20), filed by petitioner Joseph A. Insinga, to dismiss his own petition. The motion to dismiss does not specify whether the requested dismissal should be “without prejudice”; but the Commissioner filed a response (Doc. 23) stating that Mr. Insinga has elsewhere indicated that his intention is that the dismissal be without prejudice, and arguing that “any dismissal must necessarily be entered with prejudice.” Our order of July 25, 2018 (Doc. 25), directed the parties to make additional filings, because “[w]e think that there is less to this dispute than meets the eye”.

That impression has been confirmed by the parties’ subsequent filings (Docs. 26, 27). Mr. Insinga admits that--

since (1), any appeal must be filed with this court within 30 days following the date of the claim’s formal denial, i.e., July 18, 2016, and (2), there is no savings statute permitting the withdrawal and refile of the petition after the 30 day appeal period has lapsed, then there is no prejudice to respondent in any event, and the case should be dismissed. Petitioner agrees that the foregoing result would obtain, as the court observes, even if the court were to characterize the dismissal as “without prejudice.” [Doc. 26 at.1.]

SERVED Aug 31 2018

On the other hand, the Commissioner admits that “dismissal with prejudice applies only to this cause of action” and not to “subsequent appeals of [Mr. Insinga’s] future unrelated claims against the taxpayer [AmSub].” [Doc. 27 at 4.]

Thus, neither party has pointed to any actual consequence that would result from specifying whether dismissal of this case is with or without prejudice. It is therefore

ORDERED that Mr. Insinga’s motion (Doc. 20) is granted, and this case is dismissed.

**(Signed) David Gustafson
Judge**

ENTERED: **AUG 31 2018**