

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

IRVIN OWENS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 12420-18.
)	
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, filed August 8, 2018. Petitioner resided in Maryland at the time the petition underlying this proceeding was filed with the Court.

Background

On March 27, 2018, respondent issued to petitioner a notice of deficiency determining that he was liable for deficiencies in income tax in the amounts of \$8,967 and \$4,000 for 2015 and 2016, respectively, as well as an accuracy-related penalty under section 6662(a) for 2015 in the amount of \$1,793.40.¹ The notice of deficiency was premised principally on disallowance of business and itemized deductions.

On June 22, 2018, petitioner filed a petition for redetermination with the Court challenging the notice of deficiency. The petition centered on claims that the notice was not properly sent by certified mail and on complaints that Internal Revenue Service (IRS) personnel were not responsive to petitioner’s demands for information and copies of IRS correspondence.

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

Thereafter, respondent filed a Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted. Although the Court issued an Order dated August 9, 2018, directing petitioner on or before October 30, 2018, to file an objection, if any, to respondent's motion and offering him the opportunity of filing a proper amended petition, petitioner has done neither. Rather, petitioner initially submitted copies of two letters sent to respondent, demanding information. Those were followed on August 31, 2018, by the filing of a Motion for Answers To Interrogatories Pursuant to Court's Rule 71, which motion was denied as procedurally premature under Rule 70(a)(2). A Motion for Reconsideration of Order Denying Motion for Answers was then filed on September 20, 2018, and was likewise denied as the procedural problems remained. Nothing further has been received from petitioner.

Discussion

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted. The Court may grant such a motion when it appears beyond doubt that the party's adversary can prove no set of facts in support of a claim that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Price v. Moody, 677 F.2d 676, 677 (8th Cir. 1982).

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 the 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). Any issue not raised in the assignments of error is deemed to be conceded. Rule 34(b)(4); Jarvis v. Commissioner, 78 T.C. at 658 n.19; Gordon v. Commissioner, 73 T.C. at 739.

The petition herein does not satisfy the requirements of Rule 34(b)(4) and (5). There is neither assignment of error nor allegation of fact in support of any justiciable claim. Rather, the petition appears to be merely an expression of protest and contains nothing but frivolous and groundless arguments. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious

citation of precedent; to do so might suggest that these arguments have some colorable merit”. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

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). Concerning the penalty, although section 7491(c) would typically place the burden of production on respondent, petitioner’s failure to assign error to the determination of the penalty and to raise any justiciable claims in that connection serves to vitiate and relieve respondent of the obligation set forth in section 7491(c). See Funk v. Commissioner, 123 T.C. 213, 217-218 (2004); Swain v. Commissioner, 118 T.C. 358, 363-365 (2002). Moreover, the ultimate burden in any event of establishing an exception to the penalty would remain with petitioner. See Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

The premises considered, it is

ORDERED that respondent’s Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed August 8, 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 in the amount of \$8,967 and a penalty under section 6662(a) in the amount of \$1,793.40 due from petitioner for the taxable year 2015. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner for the taxable year 2016 in the amount of \$4,000.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **DEC 06 2018**