

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

JAMES H. FIGUEROA,)
)
Petitioner,)
)
v.) Docket No. 24493-18.
)
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 February 26, 2019.

Petitioner resided in the State of Nevada at the time that the petition was filed with the Court.

Background

On September 19, 2018, respondent issued to petitioner a notice of deficiency for the taxable (calendar) year 2016, wherein respondent determined that petitioner was liable for a deficiency in income tax in the amount of \$3,589.66. The notice of deficiency was premised principally on the disallowance of amounts “deducted, credited or omitted on your tax return as an indication of your disagreement with Federal income tax laws”.

Subsequently, on December 10, 2018, the Court received from petitioner a document that consisted of the first two pages of the September 19, 2018 notice of deficiency. On each page petitioner had added an identical handwritten annotation stating: “Accepted for value, all related endorsements, front and back, in accordance with House Joint Resolution 192 of June 5, 1933”, accompanied by petitioner’s signature and the date of December 3, 2018. To protect petitioner’s statutory time period within which to bring a case, the Court filed that document as a petition to commence this case at Docket No. 24493-18. An Order dated December 20, 2018, was issued directing petitioner to pay the \$60.00 filing fee for this case, or to submit an application for waiver thereof, on or before February 4, 2019. To date, petitioner has done neither.

SERVED Apr 09 2019

Thereafter, as indicated above, respondent filed a Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted on February 26, 2019. Although the Court issued an Order dated February 27, 2019, directing petitioner to file an objection, if any, on or before March 20, 2019, to respondent's motion and offering petitioner the opportunity of filing a proper amended petition, petitioner has done neither.

Discussion

Rule 40¹ 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 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. Further, the failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for the Court to hold such party in default, either on the motion of another party or on the initiative of the Court. Rule 123(a). Similarly, the failure of a petition to conform to the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a)(1), 123(b).

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 recitations. Under the circumstances, there is no need to attempt to analyze 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).

¹ Section references are to the Internal Revenue Code of 1986, as amended and in effect in the year in issue, and Rule references are to the Tax Court Rules of Practice and Procedure.

Finally, it bears mention that petitioner never paid the filing fee nor sought to demonstrate an inability to do so.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed February 26, 2019, is granted, and this case is dismissed on the stated ground. It is further

ORDERED AND DECIDED that, without regard to a so-called frozen refund (prepayment credits) in the amount of \$3,054.02, there is a deficiency in income tax due from petitioner for the taxable year 2016 in the amount of \$3,589.66.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **APR 09 2019**