

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

ROBERT JOHN HENDERSON, JR.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 12528-19S.
)	
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 September 6, 2019. Petitioner resided in Arkansas at the time the petition for redetermination was filed with the Court.

Background

On April 8, 2019, respondent issued to petitioner a notice of deficiency for the taxable year 2017 determining a deficiency in income tax of \$2,038. The tax deficiency was attributable primarily to the disallowance of education credits and a corresponding refundable American Opportunity Credit claimed on petitioner's 2017 return.

On July 8, 2019, petitioner filed a timely petition for redetermination with the Court asserting that he had not pursued any schooling for further education. Rather, the claimed credits were a result of errors made by relatives on whom he relied to prepare his return, apparently accidentally conflating information relating to another family member. The petition also advised of difficult financial and health circumstances, representing that petitioner was unable to work.

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 directing petitioner to file an objection, if any, to respondent's motion and offering petitioner the opportunity of filing a proper amended petition, petitioner has done

neither. Petitioner likewise has not responded to the Court's attempts to arrange a conference call with respondent's counsel.

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 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 failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for dismissal. Rules 34(a)(1), 40, 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 reflects a concession by petitioner that education and related credits were not properly claimed on his 2017 return. Nor does the petition appear to seek any remedy from the Court.

The premises considered, it is

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

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed September 6, 2019, 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 due from petitioner for the taxable year 2017 in the amount of \$2,038.

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

ENTERED: **NOV 18 2019**