

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

DENNIS W. GILBERT,)
)
Petitioner,)
)
v.) Docket No. 24455-13.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL AND DECISION

This case for the redetermination of a deficiency is before the Court on respondent's Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted, filed December 19, 2013.¹ Although the Court directed petitioner to file either an objection to respondent's motion or a proper amended petition, he failed to respond to the Court's Order. As explained below, we will grant respondent's motion.

On July 15, 2013, respondent issued to petitioner a notice of deficiency for tax year 2010. Respondent's deficiency determination is attributable to petitioner's failure to file an income tax return for tax year 2010 and his failure to report tax due on his earnings from self-employment. Petitioner filed a timely petition for redetermination. The petition is limited to a series of questions related to the definitions of various statutory terms. Petitioner does not dispute that he received the items of income determined in the notice of deficiency.

As indicated, respondent filed a motion to dismiss asserting that petitioner "makes no factual claims of error in the petition but argues only 'legalistic gibberish.'" We agree. 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

¹All section references are to the Internal Revenue Code of 1986, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

SERVED Mar 13 2014

deficiency and the additions to tax in dispute. Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts upon which the assignments of error are based. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982). The petition in this case 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 contains nothing but meaningless questions.

Because the petition fails to state a claim upon which relief can be granted, we will grant respondent's motion to dismiss this case. See Scherping v. Commissioner, 747 F.2d 478 (8th Cir.1984); Rules 34(a)(1), (b)(4), 123(b); see also Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986).

Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. By all appearances, petitioner instituted this case primarily for delay. Although we will not impose a penalty upon petitioner in this case, we nevertheless will take this opportunity to admonish petitioner that the Court will consider imposing such a penalty should he return to the Court and file a similar petition in the future.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, filed December 19, 2013, is granted and this case is dismissed on the ground the petition fails to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED that petitioner is liable for a deficiency in income tax and additions to tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions To Tax</u>	
		<u>Sec.</u> <u>6651(a)(1)</u>	<u>Sec.</u> <u>6651(a)(2)</u>
2010	\$2,782.00	\$625.95	\$333.84

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

ENTERED: **MAR 13 2014**