

JUN 21 2011
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UNITED STATES TAX COURT



US TAX COURT
eFILED

JUN 21 2011

JEFFREY THOMAS MAEHR,)
)
 Petitioner,)
)
 v.) Docket No. 10758-11
)
 COMMISSIONER OF INTERNAL REVENUE,)
) Filed Electronically
 Respondent.)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

UPON WHICH RELIEF CAN BE GRANTED

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 40, that this case be dismissed for failure to state a claim upon which relief can be granted, and that the Court find in its order that there are due from petitioner deficiencies in income tax and penalties and/or additions to tax for the years and in the amounts set forth in the notice of deficiency dated February 11, 2011, upon which notice this case is based.

IN SUPPORT THEREOF, respondent respectfully states:

1. On May 9, 2011, petitioner filed a petition with this Court and alleged a disagreement with the notice of deficiency, in which respondent determined deficiencies and penalties according to the following table:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax/Penalties</u>		
		<u>I.R.C. §§</u>		
		<u>6651(a) (1)</u>	<u>6651(a) (2)</u>	<u>6654</u>
2003	\$35,474.00	\$7,981.65	*	\$915.28
2004	\$38,928.00	\$8,758.80	*	\$1,115.56

2005	\$34,538.00	\$7,771.05	*	\$1,385.37
2006	\$28,181.00	\$6,340.73	*	\$1,333.65

The addition to tax under I.R.C. § 6651(a)(2) could not be determined at the time of the notice of deficiency. An addition of 0.5% is imposed for each month, or fraction thereof, of nonpayment, up to 25 percent, based on petitioner's deficiency for each year. A copy of the Notice of Deficiency dated February 11, 2011 and redacted in accordance with Tax Court Rule 27 is attached as exhibit 1-R.

2. Tax Court Rule 34(b) provides in pertinent part that the petition in a deficiency action shall contain "[c]lear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. . . . Any issue not raised in the assignment of errors shall be deemed to be conceded."

3. The petition is also required to contain "clear and concise lettered statements of the facts on which petitioner bases the assignments of error" Tax Court Rule 34(b)(5); Karkabe v. Commissioner, T.C. Memo 2007-115 (Where a petition failed to contain a clear and concise statement of errors and facts to support petitioner's assignment of error as

required by Rule 34(b), judgment upon the pleadings was appropriate.).

4. Petitioner makes no factual claims of error in the petition. Instead, as discussed below, petitioner advances a number of frivolous arguments in attempt to show that he is not subject to the Internal Revenue Code and that income is not taxable.

(a) In paragraphs (a) through (q) of the "Petition Supplement," petitioner cites or quotes various legal propositions. None of these propositions are allegations of errors or facts that are required to support petitioner's assignment of error, and petitioner has not shown how any of these propositions apply to the facts of this case.

(b) In the section titled "Petition Argument," which begins on page 3, petitioner makes no allegation of fact or assignment of error with respect to the deficiencies or penalties in the notice of determination.

(c) In subsection 1 of the "Argument," beginning on page 4, petitioner appears to argue that the Tax Court lacks jurisdiction in this case. Respondent does not concede this point. Nevertheless, if the Tax Court lacks jurisdiction in this case, then clearly no relief can be granted. Moreover, the Tax Court has rejected the general argument that respondent

lacks standing and the Court lacks jurisdiction as frivolous and without merit. Chang v. Commissioner, T.C. Memo 2007-100, at 3 and 4.

(d) In subsection 2, petitioner states that the Internal Revenue Code is not positive law. This contention has no merit and is frivolous. See Young v. I.R.S., 596 F.Supp. 141 (N.D. Ind. 1984) (describing as "preposterous" plaintiff's position that the Internal Revenue Code is not positive law).

(e) In subsections 3 and 4, petitioner argues that the Internal Revenue Service ("I.R.S.") is not a government agency and therefore lacks standing to bring an action against him. This claim is also meritless. See Donaldson v. United States, 400 U.S. 517, 534 (1971) (*superseded by statute on other grounds*).

(f) Petitioner's claim in subsection 5, that he is not a "taxpayer" liable for tax, has been roundly rejected as meritless and frivolous. See Smith v. Commissioner, T.C. Memo 2000-290 (collecting cases rejecting similar arguments); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990) (rejecting arguments that income tax is voluntary and that wages are not income).

(g) In subsection 6, petitioner claims that that he is not required to fill out a Form 1040. This argument is baseless

and has been routinely rejected. See Wheeler v. Commissioner, 127 T.C. 200, 204 n. 9 (2006); Saxon v. United States, T.C. Memo 2005-52 at 2.

(h) In subsection 7, petitioner appears to argue that because the Internal Revenue Code contains ambiguities, respondent has no authority to assess taxes. Whatever ambiguities may have existed in those statutes, the courts have plainly resolved them to arrive at the conclusion that individuals may be taxed on their income, including wages. See Smith v. Commissioner, T.C. Memo 2000-290.

(i) In subsection 8, petitioner claims that respondent has failed to provide a "Summary Record of Assessment" for the tax years at issue. This species of argument is generally reserved for Collections Due Process cases, because, according to its proponents, the failure to provide a "Summary Record of Assessment" is an abuse of discretion or an irregularity in the assessment process. Nevertheless, these arguments have been routinely denied as meritless. See e.g. Chang v. Commissioner, T.C. Memo 2007-100 (Failure to provide Form 23 C "Summary Record of Assessment" to taxpayer during or after a CDP hearing is not an abuse of discretion); Roberts v. Commissioner, 118 T.C. 365, 369-372 (2002) (same); Balice v. Commissioner, T.C. Memo 2005-161

at 4, n. 6 ("Respondent is not required to provide petitioner with the summary record of assessment.").

(j) In subsection 9, petitioner argues that his wages are not taxable income and that the Sixteenth Amendment does not allow for the taxation of wages. These contentions are also meritless and frivolous. See Brushaber v. Union Pacific R.R., 240 U.S. 1, 12-19 (1916) (upholding the constitutionality of the income tax laws under the Sixteenth Amendment); United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) ("the Sixteenth Amendment authorizes a direct non-apportioned tax . . . "); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990) (characterizing as "lacking in legal merit and patently frivolous" the argument that "wages are not income").

5. Petitioner does not assert in the petition that he received income in any amount less than that determined by respondent in the notice of deficiency.

6. Petitioner does not deny in the petition that he failed to timely file income tax returns for the years at issue, nor does he allege that such failures were due to reasonable cause and not willful neglect.

7. Petitioner does not deny in the petition that he failed to timely pay his income taxes or estimated income tax

for the years at issue, nor does he allege that such failures were due to reasonable cause and not willful neglect.

8. No justiciable error has been alleged in the petition with respect to the Commissioner's determination set forth in the notice of deficiency, and no facts in support of any such error are apparent therein. The absence in the petition of specific justiciable allegations of error and of supporting facts permit this Court to grant respondent's motion. Tax Court Rule 123(b). White v. Commissioner, T.C. Memo. 1981-609; Klein v. Commissioner, 45 T.C. 308 (1965); Goldsmith v. Commissioner, 31 T.C. 56 (1958) Abrams v. Commissioner, 82 T.C. 403 (1984) (where pleadings contained only frivolous arguments, judgment on the pleadings dismissing case was proper).

9. Under I.R.C. § 7491 respondent bears the burden of production with respect to the additions to tax under §§ 6651(a)(1); 6651(a)(2); and 6654(a). However, by failing to properly assign error to respondent's penalty determination, the petitioner is deemed to have conceded the additions to tax. Swain v. Commissioner, 118 T.C. 358, 365 (2002). Where a petition fails to state a claim regarding penalties or additions to tax, respondent incurs no obligation to produce evidence in support of such determination pursuant to I.R.C. § 7491(c). Funk v. Commissioner, 123 T.C. 213, 218 (2004).

10. The document filed as the petition does not comply with the Rules of the Tax Court as to the form and content of the petition and fails to state a claim upon which relief can be granted.

11. Petitioner objects to the granting of this motion.


WHEREFORE, it is prayed that this motion be granted.

Date: JUN 21 2011

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