



United States Tax Court
Washington, DC 20217

Anthony Andrews,)
Petitioner)
v.) Docket No. 14029-17.
Commissioner of Internal Revenue,)
Respondent)

ORDER

The petition was filed in this case on June 26, 2017, in response to a notice of deficiency that disallowed petitioner's claim of an Earned Income Credit (EIC) for taxable year 2015. The notice also determined that petitioner was liable for a penalty under Internal Revenue Code section 6662(a), however, respondent has now conceded the penalty.¹

Shortly after petitioner filed the petition, and in multiple filings later, petitioner requested that the Court appoint him counsel. In Orders dated July 11, 2017, June 6, 2018, and April 10, 2019, the Court explained why petitioner is not entitled to Court appointed counsel in this case. As indicated below, he has been advised of the possibility of pro bono tax clinics that might assist him in this case.

Throughout this case, petitioner has failed to directly address his entitlement to the EIC that he claimed for 2015, which in part depends on whether he had qualified dependents during 2015. He has claimed that his constitutional rights have been violated, that the EIC issue was settled, and that respondent's counsel was guilty of misconduct. His claims have been analyzed and rejected in the Court Order dated May 2, 2018, denying petitioner's Motion for Summary Judgment filed October 30, 2017, and Court's Order dated April 10, 2019, denying petitioner's Motion to Seal Documents filed January 28, 2019. Petitioner refuses

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

to accept the Orders of the Court, instead filing repetitive documents and motions and attempting a premature appeal.

The case was initially set for trial on February 4, 2019, in Winston-Salem, North Carolina, the place of trial requested by petitioner. Along with the notice of trial and a reminder of the trial date sent to petitioner was contact information for tax clinics serving the area where petitioner was located. That information had also been provided to petitioner in the Court's Order dated May 2, 2018.

On January 14, 2019, respondent filed a Motion to Dismiss for Lack of Prosecution, which set out petitioner's failure to provide information showing that he could satisfy the legal and factual requirements to qualify for the EIC that he claimed for 2015. Petitioner responded to the motion to dismiss with only his previously rejected arguments. On November 4, 2019, petitioner subsequently filed a Motion to Dismiss and on July 10, 2020, petitioner filed a Motion to Withdraw the Motion to Dismiss, which continue his meritless arguments and threats against respondent's counsel. Petitioner has asserted those meritless arguments in various status reports ordered by the Court and has ignored the Court's directions in Orders dated November 20, 2018, and April 10, 2019.

Petitioner has been incarcerated during the pendency of this case and apparently will be for some time. On August 4, 2021, he filed a notice of change of address indicated that he is now in a Federal Correctional facility in Florida. By maintaining only previously rejected positions, he has failed to pursue reasonable means of resolving this case. Unless he indicates an intention to abandon his meritless arguments and address the EIC issue in this case, the Motion to Dismiss for Lack of Prosecution is well taken and may be granted. See Rules 123 and 149(b).

Upon due consideration and for cause, it is hereby

ORDERED that petitioner's Motion to Dismiss filed November 4, 2019, is denied. It is further

ORDERED that petitioner's Motion to Withdraw the Motion to Dismiss filed July 10, 2020, is denied. It is further

ORDERED that on or before September 30, 2021, respondent shall prepare and present to petitioner and attach in a status report filed with the Court a stipulation setting forth facts and documents concerning the dependents claimed by petitioner in support of the EIC he claimed for 2015, on which this case might be

submitted under Rule 122. Petitioner may propose additional stipulations relating to the EIC other than his previously rejected arguments concerning settlement or improper conduct. It is further

ORDERED that on or before November 15, 2021, petitioner shall file a response to this Order indicating whether he is agreeable to submitting the case under Rule 122 or whether he can be available by telephone or Zoom for a virtual trial on reasonable notice to the parties. It is further

ORDERED that the Clerk of the Clerk shall send to petitioner copies of Rules 122, 123 and 149 along with service of this Order.

**(Signed) Joseph W. Nega
Judge**

RULE 122. SUBMISSION WITHOUT TRIAL

(a) General: Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way) may be submitted at any time after joinder of issue (see Rule 38) by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court.

(b) Burden of Proof: The fact of submission of a case, under paragraph (a) of this Rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

RULE 123. DEFAULT AND DISMISSAL

(a) Default: If any party has failed to plead or otherwise proceed as provided by these Rules or as required by the Court, then such party may be held in default by the Court either on motion of another party or on the initiative of the Court. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions (see, e.g., Rule 104) as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

(b) Dismissal: For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against any party any issue as to which such party has the burden of proof, and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

(c) Setting Aside Default or Dismissal: For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

(d) Effect of Decision on Default or Dismissal: A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

**RULE 149. FAILURE TO APPEAR OR TO ADDUCE
EVIDENCE**

(a) Attendance at Trials: The unexcused absence of a party or a party's counsel when a case is called for trial will not be ground for delay. The case may be dismissed for failure properly to prosecute, or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(b) Failure of Proof: Failure to produce evidence, in support of an issue of fact as to which a party has the burden of proof and which has not been conceded by such party's adversary, may be ground for dismissal or for determination of the affected issue against that party. Facts may be established by stipulation in accordance with Rule 91, but the mere filing of such stipulation does not relieve the party, upon whom rests the burden of proof, of the necessity of properly producing evidence in support of facts not adequately established by such stipulation. As to submission of a case without trial, see Rule 122.