

UNITED STATES TAX COURT

JOHN CHARLES FREDRICK GILLE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7568-06 S
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

**SECOND AMENDED PETITION
AND
MOTION TO REMOVE FROM SMALL TAX CASE STATUS**

Pursuant to the June 14, 2006, Order of Chief Judge John O. Colvin, Petitioner submits this Second Amended Petition, setting forth with specificity each error Petitioner alleges was made by the respondent in the determination of the deficiencies and separate statements of every fact upon which Petitioner bases the assignment of each error. The petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency dated JAN 17 2006, and as the basis for the petitioner's case alleges as follows:

1. The petitioner is an individual, with mailing address now at

P.O. Box XXXX
XXXXXXXX, FL XXXXX-XXXX

and with no other current legal residence address, since Petitioner now lives in his van. Petitioner's "taxpayer identification number" is XXX-XX-XXXX. The returns for the periods here involved were filed with the Office of the Internal Revenue Service at Austin, TX, for 2002 and Atlanta, GA, for 2003, I believe.

2. The notice of deficiency (a copy of which was attached to the original petition and marked Exhibit A) was mailed to the

petitioner on JAN 17 2006, and was issued by the Office of the Internal Revenue Service at Richmond, VA.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar years 2002 and 2003, in the amount of \$2,540, of which \$2,540 is in dispute.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

a. Respondent erred in using amounts from Forms 1040 and 1041, which had been corrected and replaced by Forms 1040X for each of the two years.

b. Respondent is without authority to ignore or override the Form 1040X declarations properly submitted. Respondent made a factual, justiciable error in ignoring the amended returns, which Respondent had received as alleged in the Petition, and in determining deficiency amounts based upon amounts shown on the refuted, admittedly erroneous, overridden, disputed original returns.

c. Without the erroneous information shown on the original information returns, and even disregarding the trust for tax purposes, the IRS has no basis for concluding IRC § 61 taxable gross income or an IRC § 1 assessment.

d. In its Motion to Dismiss, Respondent erred in assuming that Petitioner was still "attempting to attribute the income and expenses to the trust."

e. Respondent's wrong conclusion in 4.2 above appears to follow from the erroneous conclusion that "[P]etitioner does not dispute that he engaged in a trade or business for 2002 and 2003."

f. Since the information returns upon which Respondent has

based claims of taxable income are disputed, Respondent bears the burden of "producing reasonable and probative information concerning such deficiency in addition to the information returns." 26 USC § 6201(d). Respondent has thus far failed to respond to requests to produce such evidence.

g. The Petitioner's demand for return of overpayment of taxes for 2002 and 2003 is one upon which relief can be granted, because of the IRC § 6401(c) clarification: "An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid." This overpayment therefore is subject to return under IRC § 6402, a relief which can be granted.

5. The facts upon which the petitioner relies, as the basis of the petitioner's case, are as follows:

a. Forms 1040X for calendar years 2002 and 2003 were mailed on 5/11/2005 and signed for by "T Small" at the IRS Service Center in Atlanta at 1:30 p.m. on 5/16/2005, approximately seven months before the notice of deficiency.

b. To each Form 1040X was attached a corrected Form 1099-MISC, rebutting and correcting a Form 1099-MISC submitted by a payer erroneously alleging a payment to Petitioner's trust of "gains, profit, or income" made in the course of a "trade or business".

c. Each corrected Form 1099-MISC contained a statement signed by Petitioner under penalty of perjury, stating that the corrected statement was true, correct, and complete, to the best of Petitioner's knowledge and belief.

d. The corrected Forms 1040X each indicated that there was

no taxable income or tax liability for the calendar year, and claimed a refund of the overpayment.

e. The amended returns conceded that the use of the trust made no difference to the IRS, and payments to the trust were equivalent to payments to Petitioner. The amount of payments made to Petitioner in the course of a "trade or business" in those years, without regard to whether they were made by way of the trust or otherwise, was corrected.

f. Petitioner had originally reported receipts and expenses of his sign surveying business, as though he were an IRC 7701(a)(26) "trade or business". This error was based upon Petitioner's ignorance at the time, and his false belief that the Internal Revenue Service was acting outside the boundaries of Constitutional law, and imposing taxes on the inherent right of each human being to support himself. This was before Petitioner became aware that the Internal Revenue laws are carefully designed to require taxes only on legitimate objects of taxation, such as the type of activity set forth in the definition of the term "trade or business" found at 26 USC 7701(a)(26), that is, some form of government-created or -granted privilege, which can be properly subjected to an excise tax, the amount of the tax to be based upon the income derived from the taxable privileged activity.

g. Upon becoming aware of his mistake, Petitioner saw that the Forms 1099-MISC had been erroneously issued, erroneously indicating that payments were made to him or his trust in the course of a "trade or business", and that he may have been guilty of a felony, by acting as though he were a federal officer or employee.

18 USC 912.

h. Petitioner does indeed dispute that he engaged in a "trade or business" as that term is used in the internal revenue laws, for 2002 and 2003. It was precisely to correct his mistake of having erroneously submitted returns as though he were so engaged, that Petitioner filed amended returns for the two years at issue here, attaching corrected Forms 1099-MISC refuting and correcting the amounts shown on the reports and thereby informing the IRS that the amounts were in dispute.

i. Petitioner agrees with Respondent's statement that Petitioner improperly reported receipts and expenses on the returns of a trust. Those receipts and expenses should not have been reported at all, since they were not related to taxable activity.

j. Respondent is authorized to assess a tax based upon a return. IRC § 6201(a)(1). The amended returns showed that the correct amount of taxable income was zero for both 2002 and 2003, wherefore the amounts remitted for those two years were overpayments, subject to being returned.

k. In response to the notice of deficiency, Petitioner wrote to the contact person indicated on the notice, and requested copies of the Forms 1040X, as well as any other information in possession of the IRS indicating or alleging payments to Petitioner of taxable income during the years 2002 and 2003. The request was received and signed for on behalf of Julia Beckett on 2/27/2006 by Joseph Bagby at the Richmond, VA, IRS Service Center.

l. No response to the above request has been received.

m. On March 8, 2006, Petitioner again wrote the contact

person and address indicated on the notice of deficiency, calling attention to the Forms 1040X which had been filed for each year, and restating under penalty of perjury that the Forms 1040X were true and correct, that without the erroneous information shown on the original information returns, there was no basis to conclude IRC section 61 gross income, nor for an IRC Section 1 assessment, and requesting a corrected notice of deficiency or at least section 6201(d) reasonable and probative information or other credible evidence the IRS relied upon, other than the disputed erroneous information returns, that refuted Petitioner's position.

n. The above requests of March 8, 2006, were received and signed for by Phylis Berkesy on 3/10/2006 at the IRS Service Center in Richmond Virginia, but Petitioner has not yet received a response.

WHEREFORE, Petitioner prays that the deficiencies for the years 2002 and 2003 be redetermined, to reflect the correct tax liability of zero for each year.

Petitioner further moves that this case NOT be handled as a small tax case, since Petitioner was misled by the Small Tax Case form provided in response to his request for forms, which had a check box beneath the statement "Petitioner(s) request(s) that this case be conducted under the 'small tax case' procedures." Not wanting that option, Petitioner did not check the box. Further indicating his intent, in the cover letter to the Clerk when filing his Amended Petition, Petitioner explained to the Clerk,

"Here is an AMENDED PETITION, which is amended for the sole purpose and effect of better conforming with the Form found in Appendix I of the Rules of the Court, and Rule 34(b), since the original form provided to me, which I used, was the form for a Small Claim."

Petitioner only very recently noticed that the Small Tax Case form says the box is to be checked if Petitioner does NOT want the case conducted as a "small tax case", which confusingly contradicts the first sentence of the paragraph.

WHEREFORE, Petitioner prays that the case not be handled as a small tax case.

.....
John Charles Fredrick Gille, Petitioner
PO Box XXXX
XXXXXXXX, FL XXXXX-XXXX
ph. XXX-XXX-XXXX

Dated: