

UNITED STATES TAX COURT
Washington, D.C. 20217

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

ORDER OF DISMISSAL AND DECISION

On January 17, 2006, respondent issued to petitioner a notice of deficiency for the taxable years 2002 and 2003.¹ Respondent determined that petitioner failed to report income that he earned operating a business during the years in issue.

Petitioner filed a timely petition for redetermination contesting the above-referenced notice of deficiency. The petition contains nothing but frivolous and groundless arguments. Petitioner resided in Seminole, Florida, at the time the petition was filed.

Respondent filed a Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under I.R.C. § 6673. By Order dated June 14, 2006, petitioner was directed to file a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiencies and separate statements of every fact upon which the assignments of error are based. On July 5, 2006, petitioner filed an Amended Petition raising nothing but frivolous and groundless arguments.

This matter was called for hearing at the Court's motions session held in Washington, D.C., on July 12, 2006. Counsel for respondent appeared at the hearing and presented argument in support of respondent's motion to dismiss. No appearance was entered by or on behalf of petitioner at the hearing, however, he filed with the Court a written statement pursuant to Rule 50(c).

¹ Section references are to sections of the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

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 deficiencies and the additions to tax and/or penalties in dispute. 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).

The pleadings filed in this case do 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 pleadings contain nothing but frivolous and groundless arguments. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

Because the pleadings fail to state a claim upon which relief can be granted, we shall grant respondent's motion insofar as respondent requests that the case be dismissed. See Scherping v. Commissioner, 747 F.2d 478 (8th Cir. 1984); Rules 34(a)(1), 123(b).

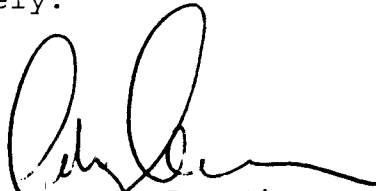
Respondent also moves for the imposition of a penalty on petitioner pursuant to section 6673(a)(1). Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained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

Upon due consideration and for cause, it is hereby

ORDERED: That respondent's Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under I.R.C. § 6673, filed June 12, 2006, is granted in that this case is dismissed on the ground that the pleadings fail to state a claim upon which relief can be granted. It is further

ORDERED: That respondent's Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under I.R.C. § 6673, filed June 12, 2006, is denied insofar as respondent seeks the imposition of a penalty under section 6673(a). It is further

ORDERED AND DECIDED: That petitioner is liable for deficiencies of \$1,530 and \$1,010 in his Federal income taxes for 2002 and 2003, respectively.



Peter J. Panuthos
Chief Special Trial Judge

ENTERED: JUL 18 2006