

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ROBERT ALLEN McNEIL,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1541-06.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL AND DECISION

This case is on the Court's November 27, 2006 trial calendar for Houston, Texas. On October 11, 2006, petitioner moved to dismiss because this Court supposedly lacks jurisdiction of "cases concerning allegations of fraud." The Court construed that to mean that petitioner objected to the assertion of a fraud penalty against him, and denied the motion because respondent had not asserted such a penalty.

On October 31, 2006, petitioner asked for a conference call to discuss the case. It became clear that petitioner had based his case on a misunderstanding -- he thought that respondent lacked the authority to issue a notice of deficiency without first making an assessment. In truth, of course, the Code generally *forbids* respondent from making an assessment of a possibly disputed amount without first issuing a notice of deficiency. See IRC secs. 6212(a), 6213(a).

Petitioner then conceded that he had not filed a return for the year in question and had no disagreement with the third-party information -- returns from petitioner's employer showing his wages and from his bank showing some interest income -- on which respondent had based the notice. Relations between petitioner and the IRS have apparently been difficult, and respondent's counsel may well have come to trial with a motion for sanctions under section 6673 if this case continued to be prosecuted.

After discussing this, petitioner suggested it was appropriate to dismiss the case. The Court advised the parties that any dismissal would result in entry of decision sustaining the adjustments made by respondent in his notice of deficiency. IRC § 7459(d). Petitioner said that he understood. Accordingly,

the Court will, under Rule 124(b), regard petitioner's informed suggestion as sufficient cause to dismiss this case and it is

ORDERED that this case is dismissed. It is also

ORDERED and DECIDED that there is a deficiency in income tax due from the petitioner in this case for the taxable year 2002 in the amount of \$25,469.00, and an addition to tax under I.R.C. § 6651(a)(1) in the amount of \$5,730.52, an addition to tax under I.R.C. § 6651(a)(2) in the amount of \$3,565.66, and an addition to tax under I.R.C. § 6654 of \$851.09.

(Signed) Mark V. Holmes

Mark V. Holmes
Judge

ENTERED: NOV - 1 2006

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