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Michael Austin French & Dawn Michelle French,

Petitioners

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed
Docket No. 20225-23
Document No. 7

Motion for Default and Dismissal

SERVED 03/08/24

UNITED STATES TAX COURT

Washington, DC 20217

Michael Austin French	}	
Dawn Michelle French	}	
Petitioners	}	Docket Number:
v.	}	20225-23
COMMISSIONER OF	}	Filed Electronically
INTERNAL REVENUE,	}	
Respondent	}	

PETITIONERS' MOTION FOR DEFAULT AND ENTRY OF

DECISION IN PETITIONERS' FAVOR

PETITIONERS respectfully Move the Court to find Respondent in default, due to Respondent's failure to provide an Answer to the Petition that:

- a) is well grounded in fact and is warranted by existing law;
- b) is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

- c) advises the Petitioners and the Court fully of the nature of the defense;
- d) includes a specific admission or denial of each material allegation in the Petition; or
- e) contains clear and concise statements of every ground, together with the facts in support thereof, on which the Respondent relies and has the burden of proof.

Petitioners further respectfully Move the Court, on the basis of finding Respondent to be in default, and the admissions made thereby, to enter a decision in Petitioners' favor and determine there to be no deficiency in the above-captioned matter, pursuant to United States Tax Court Rules of Practice & Procedure ("TCRPP") Rules 33(b), 36(b) and 123.

Petitioners provided prior notice and Respondent's concurrence was sought via email on March 6, 2024, from counsel of record for Respondent. See Exhibit A. Respondent did not respond. Petitioners assume he objects to this motion.

STATEMENT OF MATERIAL FACTS

1. The NOD was issued by Respondent on or about October

18, 2023.

2. On December 22, 2023, Petitioners timely filed their Petition before the Court in response to the NOD.
3. On February 16, 2024, Respondent electronically filed his Answer to the Petition, which was received by Petitioners on the same day.
4. Respondent's Answer was signed by counsel of record CHRISTOPHER M. MENCZER on February 15, 2024.
5. On March 4, 2024, Petitioners timely filed their Reply to the allegations in Respondent's Answer.

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS'

MOTIONS

6. TCRPP Rule 33(b) explicitly states that counsel or a party signing a pleading certifies that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.
7. TCRPP Rule 33(b) explicitly states that counsel or a party

signing a pleading certifies that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, that it is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

8. TCRPP Rule 36(b) explicitly states that the answer must be written so that it will advise the Petitioners and the Court fully of the nature of the defense.
9. TCRPP Rule 36(b) explicitly states that the answer must include a specific admission or denial of each material allegation in the Petition.
10. TCRPP Rule 36(b) explicitly states that the answer must contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof.
11. TCRPP Rule 123(a) explicitly states that if any party has failed to plead or otherwise proceed as provided by the TCRPP or as required by the Court, then such party may be held in default by the Court on motion of another party.

12. TCRPP Rule 123(a) explicitly states 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 as the Court may deem appropriate.

13. IRC §6201(a) Authority of Secretary states:

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law.

14. IRC §6201(d) Required reasonable verification of information returns states:

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

15. IRC §7491(a) Burden shifts where taxpayer produces credible evidence states:

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have

the burden of proof with respect to such issue.

16. IRC §7491(c) Penalties states:

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

RESPONDENT IS IN DEFAULT DUE TO HIS FAILURE TO

PROCEED AS PROVIDED BY THE TCRPP

17. Respondent's answer to Petition item number (4), under the subheading "FACTS" is, "Admits. Alleges petitioners overstated the amount of their income tax withholding on their 2020 joint return."

- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in

support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).

d. Respondent fails to provide proof Petitioners overstated the amount of their income tax withholding on their 2020 joint return despite the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

18. Respondent's answer to Petition item number (6), under the subheading "FACTS" is, "a. through j. Admits. Alleges the notice of deficiency is correct in all regards."

a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).

b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).

c. Respondent's purported answer fails to contain a clear and

concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).

- d. Respondent fails to produce reasonable and probative information concerning the disputed items of income reported on information returns by third parties in addition to such information returns as required under IRC §6201(d).
- e. Respondent fails to provide proof the NOD is correct in all regards despite the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

19. Respondent's answer to Petition item number (7), under the subheading "FACTS" is, "Denies."

- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary

- delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - d. Respondent by his denial claims to have personal knowledge that Petitioners knowingly or negligently disregarded rules or regulations governing the preparation of their tax returns yet fails to provide proof of it.
20. Respondent's answer to Petition item number **(8)**, under the subheading "FACTS" is, "Denies."
- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
 - b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).

- c. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - d. Respondent by his denial claims to have personal knowledge that Petitioners intentionally disregarded tax rules or regulations and/or were careless or reckless in the preparation of their tax returns yet fails to provide proof of it.
21. Respondent's answer to Petition item number (9), under the subheading "FACTS" is, "Denies."
- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
 - b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
 - c. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in

support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).

- d. Respondent fails to provide proof Petitioners are liable for any amount whatsoever of the alleged deficiency in income tax despite the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

22. Respondent's answer to Petition item number **(10)**, under the subheading "FACTS" is, "Denies."

- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has

the burden of proof as required under TCRPP Rule 36(b).

- d. Respondent fails to provide proof of underpayment of Petitioners' Federal income tax liabilities despite the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

23. Respondent's answer to Petition items under the subheading "ASSIGNMENT OF ERRORS" is, "(1) through (9). Denies."

- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).

- d. Respondent's purported answer fails to include a specific admission or denial of each material allegation in the Petition as required under TCRPP Rule 36(b).
 - e. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - f. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).
24. Respondent's answer to Petition item number (1), under the subheading "AFFIRMATIVE DEFENSES" is, "Denies."
- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
 - b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as

proscribed under TCRPP Rule 33(b).

- c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).
 - d. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - e. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).
 - f. Respondent by his denial claims the NOD provides the factual foundation for the allegation of deficiency and/or alleges errors of arithmetic or improper deductions on or in regards to Petitioners' tax return, yet fails to point to precisely where these facts and/or allegations exist in the NOD.
25. Respondent's answer to Petition item number **(2)**, under the

subheading "AFFIRMATIVE DEFENSES" is, "Denies."

- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).
- d. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
- e. Respondent by his denial claims to be ignorant of the requirement to produce reasonable and probative information concerning the disputed items of income reported on information returns by third parties in addition to

such information returns as required under IRC §6201(d).

- f. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

26. Respondent's answer to Petition item number (3), under the subheading "AFFIRMATIVE DEFENSES" is, "Denies. Alleges respondent has the burden of production with respect to the petitioners' liability for penalties under IRC § 6662(a). IRC § 7491(c)."

- a. Respondent's qualified answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- b. Respondent's qualified answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).
- c. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual

issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).

d. Respondent although alleging he does have the burden of production with respect to the Petitioners' liability for penalties under IRC §6662(a) fails to produce any evidence for Petitioners' liability for penalties as required under IRC §7491(c).

27. Respondent's answer to Petition item number (4), under the subheading "AFFIRMATIVE DEFENSES" is, "Denies."

a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).

b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).

c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).

- d. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - e. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).
28. Respondent's answer to Petition item number (5), under the subheading "AFFIRMATIVE DEFENSES" is, "Denies."
- a. Respondent's purported answer fails to be well grounded in fact or be warranted by existing law as required under TCRPP Rule 33(b).
 - b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
 - c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense

- as required under TCRPP Rule 36(b).
- d. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - e. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).
 - f. Respondent by his denial claims Respondent discussed examination changes with Petitioners yet fails to provide proof of this alleged discussion or to identify with specificity when, where and by what means the alleged discussion of examination changes with Petitioners occurred.
29. Respondent's answer to Petition item number (6), under the subheading "AFFIRMATIVE DEFENSES" is, "Admits the accuracy of the quoted language from the Form 886-A attached to the notice of deficiency. Otherwise, denies."
- a. Respondent's purported answer fails to be well grounded in

fact or be warranted by existing law as required under TCRPP Rule 33(b).

- b. Respondent's purported answer is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
- c. Respondent's purported answer fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).
- d. Respondent's purported answer fails to contain a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
- e. Respondent by his denial claims to be ignorant of the requirement to provide proof with respect to any factual issue relevant to ascertaining Petitioner's Federal income tax liabilities as required under IRC §7491(a)(1).
- f. Respondent by his qualified answer claims to be ignorant of the specific mathematical operation required by the quoted

language from the Form 886-A attached to the NOD that he admits is accurate, as the terminology, "the overpayment will be applied to the tax deficiency" denotes subtraction of the overpayment from the alleged deficiency; Respondent by his denial alleges the correct mathematical operation is addition of the overpayment and the alleged deficiency, which is ridiculous on its face, and Respondent provides no proof that this is correct.

30. Respondent fails to provide a specific admission or denial of the material allegation in Petition item number (7), under the subheading "AFFIRMATIVE DEFENSES" as required under TCRPP Rule 36(b).
 - a. Respondent's lack of answer is for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
 - b. Respondent fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).

- c. Respondent fails to provide a clear and concise statement of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).
 - d. Respondent fails to provide proof he conducted any good-faith inquiries prior to issuing the NOD as required under IRC §6201(a).
31. Respondent fails to provide a specific admission or denial of the material allegation in Petition item number (8), under the subheading "AFFIRMATIVE DEFENSES" as required under TCRPP Rule 36(b).
- a. Respondent's lack of answer is for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation as proscribed under TCRPP Rule 33(b).
 - b. Respondent fails to advise the Petitioners and the Court fully of the nature of the defense as required under TCRPP Rule 36(b).
 - c. Respondent fails to provide a clear and concise statement

of the grounds, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof as required under TCRPP Rule 36(b).

- d. Respondent fails to provide proof the NOD states a claim on which relief can be granted.

CONCLUSION AND PRAYER

RESPONDENT has failed to proceed as provided by the TCRPP as explicitly shown in items (17) through (31) above and is therefore in default per TCRPP Rule 123(a).

Respondent's failure to answer the Petition in good faith constitutes Respondent's tacit admission of all material factual allegations, assignments of error and affirmative defenses set forth in the Petition. Respondent is clearly in default and has relinquished his right to proceed in this matter. Accordingly, Petitioners are entitled to findings and a decision in their favor.

Respondent makes a living as this nation's presumed expert in the field of tax law and its administration, as well as tax court rules of practice and procedure, with a multi-billion dollar budget and legions of legal counsel at his disposal, and therefore should

be held to a higher standard than Petitioners, who are merely private citizens. Thus, there can be no plausible or sufficient reason to excuse a finding of default and decision in favor of Petitioners.

WHEREFORE, Petitioners pray this Court issue an order:

- a) finding Respondent failed to conduct any good-faith inquiries prior to issuing the purported NOD in violation of the express statutory duty to do so under under IRC §6201(a);
- b) finding Respondent's allegations of deficiency are entirely lacking in factual foundation and are therefore completely arbitrary, capricious and false;
- c) finding Respondent's determinations are erroneous and/or there are no tax, penalties, or interest due whatsoever from Petitioners for the tax year ended December 31, 2020;
- d) finding all amounts erroneously withheld by Respondent shall be refunded to Petitioners without the filing of an additional claim, aside from the lawfully prepared and sworn joint tax return on Form 1040 already filed for the tax year ended December 31,

2020; and

e) awarding such other and further relief for Petitioners as may be deemed just and proper.

By:  Date: 3/8/24
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