

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KENNETH A. MCRAE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 21799-16
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

This case for the redetermination of a deficiency is before the Court on respondent’s motion to dismiss for failure to state a claim upon which relief can be granted, filed November 7, 2016. By Order dated January 4, 2017, petitioner was given the opportunity to: (1) submit an objection, if any, to respondent’s motion, and/or (2) submit a proper amended petition. He has done neither.

According to respondent’s motion, petitioner “makes no factual claims of error in the petition but argues only law and legal conclusions therein.” This is true for most of the statements contained in the section of the petition entitled “IV Allegations/Assignments of Error”, but in the last full paragraph on page 5 of part A of that section of the petition, petitioner alleges, in part, that “on information and belief” the notice of deficiency (notice) that forms the basis of this case “was issued on the basis of inaccurate and unreliable records”.¹

According to the notice, petitioner failed to file a Federal income tax return for the year here in issue, so respondent “used Information Return Documents filed by payers as reported under * * * [petitioner’s] Social Security Number to determine * * * [his] income.” The details of the information reported on the “Information Return Documents”, however, are not set forth in the copy of the notice attached to respondent’s motion, which is the only copy of the notice currently in the record. That being so, and giving petitioner the benefit of every doubt as we are required to do in our consideration of respondent’s motion, see Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), the above-referenced

¹Part B of section IV of the petition contains a similar allegation.

allegation gives rise to a justiciable issue, that is, whether the information return reports relied upon by respondent are accurate and reliable. Consequently, resolving this case in summary fashion, as respondent's motion would have us do, is inappropriate at this stage of the proceedings.

Nevertheless, respondent's motion calls to the Court's attention much of the impertinent, if not frivolous matter contained in the petition, and that matter will be stricken.

Premises considered, it is

ORDERED that the following material is stricken from the petition: (1) all of part A of section IV, with the exception of the last full paragraph on page 5 as referenced above; (2) all of part C of section IV; (3) all of part D of section IV; (4) all of part E of section IV; (5) all of section V; and (6) all of section VI. It is further

ORDERED that respondent's motion is denied. It is further

ORDERED that respondent's answer is due on or before 30 days from the date of service of this Order.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
June 1, 2017