THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS

March 2022

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This document describes and responds to some of the common frivolous arguments made by individuals and groups who oppose compliance with the federal tax laws. The first section groups these arguments under five general categories, with variations within each category. Each contention is briefly explained, followed by a discussion of the legal authority that rejects the contention. The second section responds to some of the common frivolous arguments made in collection due process cases brought pursuant to sections 6320 and 6330. These arguments are grouped under ten general categories and contain a brief description of each contention followed by a discussion of the correct legal authority. A final section explains the penalties that the courts may impose on those who pursue tax cases on frivolous grounds. The court opinions cited as relevant legal authority illustrate how these arguments are treated by the IRS and the courts. Note that courts often decline "to refute [frivolous] arguments with somber reasoning and copious citation of precedent" for a variety of reasons. Aldrich v. Commissioner, T.C. Memo. 2013-201, 106 T.C.M. (CCH) 192 (2013) (quoting Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984)); Wnuck v. Commissioner, 136 T.C. 498 (2011).

This document, including the relevant legal authorities cited, is not intended to provide an exhaustive list of frivolous tax arguments. Merely because a frivolous argument is not included in this document does not mean that it is not frivolous. Taxpayers may not rely on frivolous arguments to avoid or evade federal taxes. The government and courts are not precluded from penalizing taxpayers who raise a frivolous argument not addressed in this document.

I. FRIVOLOUS TAX ARGUMENTS IN GENERAL

A. The Voluntary Nature of the Federal Income Tax System

1. Contention: The filing of a tax return is voluntary.

Some taxpayers assert that they are not required to file federal tax returns because the filing of a tax return is voluntary. Proponents of this contention

point to the fact that the IRS tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, these taxpayers frequently quote Flora v. United States, 362 U.S. 145, 176 (1960), for the proposition that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint."

The Law: The word "voluntary," as used in Flora and in IRS publications, refers to our system of allowing taxpayers initially to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them from the outset. The requirement to file an income tax return is not voluntary and is clearly set forth in sections 6011(a), 6012(a), et seq., and 6072(a) of the Internal Revenue Code. See also Treas. Reg. § 1.6011-1(a).

Any taxpayer who has received more than a statutorily determined amount of gross income in a given tax year is obligated to file a return for that tax year. Failure to file a tax return could subject the non-compliant individual to civil and/or criminal penalties, including fines and imprisonment. In United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986), the court stated that, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary collection. . . . The IRS' efforts to obtain compliance with the tax laws are entirely proper." The IRS warned taxpayers of the consequences of making this frivolous argument in Rev. Rul. 2007-20, 2007-1 C.B. 863 and in Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

Helvering v. Mitchell, 303 U.S. 391, 399 (1938) – the Supreme Court stated that "[i]n assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. . . . in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes [either criminal or civil] sanctions."

United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986) – the Tenth Circuit upheld a conviction for willfully failing to file a return, stating that the premise "that the tax system is somehow 'voluntary' . . . is incorrect."

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the Eighth Circuit upheld a conviction and fines imposed for willfully failing to file tax returns, stating that the claim that filing a tax return is voluntary is "an imaginative argument, but totally without arguable merit."

United States v. Hartman, 915 F. Supp. 1227, 1230 (M.D. Fla. 1996) – the court held that "[t]he assertion that the filing of an income tax return is voluntary is . . . frivolous." The court noted that I.R.C. § 6012(a)(1)(A), "requires that every individual who earns a threshold level of income must file a tax return" and that "failure to file an income tax return subjects an individual to criminal penalty."

Other Cases:

United States v. Drefke, 707 F.2d 978 (8th Cir. 1983); United States v. Schulz, 529 F. Supp. 2d 341 (N.D.N.Y. 2007); Foryan v. Commissioner, T.C. Memo. 2015-114, 109 T.C.M. (CCH) 1591 (2015); Jones v. Commissioner, T.C. Memo. 2014-101, 107 T.C.M. (CCH) 1495 (2014).

2. Contention: Payment of federal income tax is voluntary.

In a similar vein, some argue that they are not required to pay federal taxes because the payment of federal taxes is voluntary. Proponents of this position argue that our system of taxation is based upon voluntary assessment and payment. They frequently claim that there is no provision in the Internal Revenue Code or any other federal statute that requires them to pay or makes them liable for income taxes, and they demand that the IRS show them the law that imposes tax on their income. They argue that, until the IRS can prove to these taxpayers' satisfaction the existence and applicability of the income tax laws, they will not report or pay income taxes. These individuals or groups reflexively dismiss any attempt by the IRS to identify the laws, thereby continuing the cycle. The IRS discussed this frivolous position at length and warned taxpayers of the consequences of asserting it in Rev. Rul. 2007-20, 2007-1 C.B. 863 and in Notice 2010-33, 2010-17 I.R.B. 609.

The Law: The requirement to pay taxes is not voluntary. Section 1 of the Internal Revenue Code clearly imposes a tax on the taxable income of individuals, estates, and trusts, as determined by the tables set forth in that section. (Section 11 imposes a tax on corporations' taxable income.)

Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns. Failure to pay

taxes could subject the non-complying individual to criminal penalties, including fines and imprisonment, as well as civil penalties.

In United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), the Eighth Circuit Court of Appeals stated, in discussing section 6151, that "when a tax return is required to be filed, the person so required 'shall' pay such taxes to the internal revenue officer with whom the return is filed at the fixed time and place. The sections of the Internal Revenue Code imposed a duty on Drefke to file tax returns and pay the appropriate rate of income tax, a duty which he chose to ignore." Id. (emphasis omitted).

Although courts, in rare instances, have waived *civil penalties* because they have found that a taxpayer relied on an IRS misstatement or wrongful misleading silence with respect to a factual matter, there have been no cases in which the IRS's lack of response to a taxpayer's inquiry has relieved the taxpayer of the duty to pay *tax* due under the law.

Relevant Case Law:

United States v. Schiff, 379 F.3d 621, 631 (9th Cir. 2004) – the Ninth Circuit affirmed a federal district court's preliminary injunction barring Irwin Schiff, Cynthia Neun, and Lawrence N. Cohen from selling a tax scheme that fraudulently claimed that payment of federal income tax is voluntary. In subsequent criminal trials, Schiff, Neun, and Cohen were convicted of violating several criminal laws relating to their scheme. See 2005 TNT 206-18. Schiff received a sentence of more than 12 years in prison for tax evasion and was ordered to pay more than $4.2 million in restitution to the IRS; Neun received a sentence of nearly 6 years and was ordered to pay $1.1 million in restitution to the IRS; and Cohen received a sentence of nearly 3 years and was ordered to pay $480,000 in restitution to the IRS. See Professional Tax Resister Sentenced to More Than 12 Years in Prison for Tax Fraud.

Keenan v. Commissioner, 233 F. App'x 719, 720 (9th Cir. 2007) – the Ninth Circuit stated that "assertions that the tax system is voluntary" are frivolous.

Banat v. Commissioner, 80 F. App'x 705, 706–07 (2d Cir. 2003) – the Second Circuit upheld $2,000 in sanctions against a taxpayer because his argument that "the payment of income taxes was voluntary" was "contrary to well-established law and thus was frivolous."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the Eighth Circuit stated that the "[taxpayers'] claim that payment of federal income tax is voluntary clearly lacks substance" and imposed sanctions in the amount of

$1,500 "for bringing this frivolous appeal based on discredited, tax-protester arguments."

Wilcox v. Commissioner, 848 F.2d 1007, 1009 (9th Cir. 1988) – the Ninth Circuit rejected Wilcox's argument that payment of taxes is voluntary for American citizens and imposed a $1,500 penalty against Wilcox for raising frivolous claims.

United States v. United States v. Schultz, 529 F. Supp. 2d 341, 357–58 (N.D.N.Y. 2007) – the court permanently barred Robert Schulz and his organizations, We the People Congress and We the People Foundation, from promoting a tax scheme that helped employers and employees improperly stop tax withholding from wages on the false premise that federal income taxation is voluntary.

Jones v. Commissioner, T.C. Memo. 2014-101, 107 T.C.M. (CCH) 1495 (2014) – the court imposed several sanctions of $25,000 against a taxpayer who argued, amongst other frivolous arguments, that "the Internal Revenue Code does not establish any liability for the payment of Federal income tax."

Other Cases:

Schiff v. United States, 919 F.2d 830 (2d Cir. 1990); United States v. Berryman, 112 A.F.T.R.2d (RIA) 2013-6282 (D. Colo. 2013); United States v. Sieloff, 104 A.F.T.R.2d (RIA) 2009-5067 (M.D. Fla. 2009); United States v. Melone, 111 A.F.T.R.2d (RIA) 2013-1369 (D. Mass. 2013); Foryan v. Commissioner, T.C. Memo. 2015-114, 109 T.C.M. (CCH) 1591 (2015); Horowitz v. Commissioner, T.C. Memo. 2006-91, 91 T.C.M. (CCH) 1120 (2006).

3. Contention: Taxpayers can reduce their federal income tax liability by filing a "zero return".

Some taxpayers attempt to reduce their federal income tax liability by filing a tax return that reports no income and no tax liability (a "zero return") even though they have taxable income. Many of these taxpayers also request a refund of any taxes withheld by an employer. These individuals typically attach to the zero return a "corrected" Form W-2 or another information return that reports income and income tax withholding, relying on one or more of the frivolous arguments discussed throughout this outline to support their position.

The Law: A taxpayer that has taxable income cannot legally avoid income tax by filing a zero return. Section 61 provides that gross income includes all income from whatever source derived, including compensation for services. Courts have repeatedly penalized taxpayers for making the frivolous argument that the filing of a zero return can allow a taxpayer to avoid income tax liability or permit a refund of tax withheld by an employer. Courts have also imposed the frivolous return and failure to file penalties because these forms do not evidence an honest and reasonable attempt to satisfy the tax laws or contain sufficient data to calculate the tax liability, which are necessary elements of a valid tax return. See Beard v. Commissioner, 82 T.C. 766, 777–79 (1984). The IRS warned taxpayers of the consequences of making this frivolous argument in Rev. Rul. 2004-34, 2004-1 C.B. 619. Furthermore, the inclusion of the phase "nunc pro tunc" or other legal phrases on a return, has no legal effect and does not serve to validate a zero return. See Rev. Rul. 2006-17, 2006-1 C.B. 748; Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

Kelly v. United States, 789 F.2d 94, 97 (1st Cir. 1986) – the First Circuit held that the taxpayer's failure to report any income from wages, the "unexplained designation of his Form W-2 as 'Incorrect', and his attempt to deduct as a cost of labor expense on Schedule C an amount almost identical to the amount of wages on Form W-2" established that his position (that compensation for his labor was not "wages" or taxable income) was both incorrect and frivolous.

Sisemore v. United States, 797 F.2d 268, 270 (6th Cir. 1986) – the Sixth Circuit upheld the assessment of a frivolous-return penalty on taxpayers because "their amended return [showing no income] on its face clearly showed that their assessment of their taxes was substantially incorrect and that their position on the matter [that their wages were zero because received in equal exchange for their labor] was frivolous."

Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985) – the Ninth Circuit held that the district court properly found the taxpayer liable for a penalty for filing a frivolous tax return because he listed his wages as zero and attempted "to escape tax by deducting his wages as 'cost of labor' and by claiming that he had obtained no privilege from a governmental agency[.]"

Davis v. United States Government, 742 F.2d 171, 172 (5th Cir. 1984) – the Fifth Circuit held as clearly frivolous the taxpayers' reasons ("rejected . . . time and time again") for reporting no wages and no gross income, when they had received over $60,000 in earnings or other compensation as evidenced by the Forms W-2 attached to their Form 1040.

United States v. Lovely, 420 F. Supp. 3d 398, 408 (M.D.N.C. 2019) – holding a taxpayer liable for civil penalties because his "primary claim—that as a matter of law he made zero taxable income despite being employed—is incorrect as it is established beyond doubt that employees must generally pay federal income tax on their salaries."

United States v. Melone, 111 A.F.T.R.2d (RIA) 2013-1369 (D. Mass. 2013) – the court held that the taxpayer, who filed "zero returns," falsely asserting he made no income, was liable for civil penalties.

United States v. Ballard, 101 A.F.T.R.2d (RIA) 1241, (N.D. Tex. 2008) – the court permanently enjoined a tax return preparer from engaging in further tax return preparation or tax advice because he prepared federal income tax returns for customers that falsely showed nothing but zeroes.

Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the petitioner's argument was frivolous, citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction under section 6673 for making frivolous arguments.

Other Cases:

United States v. Schiff, 544 F. App'x 729 (9th Cir. 2013); Leyva v. Commissioner, 483 F. App'x 371 (9th Cir. 2012); United States v. Cohen, 262 F. App'x 14 (9th Cir. 2007); United States v. Conces, 507 F.3d 1028 (6th Cir. 2007); United States v. Schiff, 379 F.3d 621 (9th Cir. 2004); United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980); United States v. Nichols, 115 A.F.T.R.2d (RIA) 2015-1971 (D. Wash. 2015); United States v. Hill, 97 A.F.T.R.2d (RIA) 2006-548 (D. Ariz. 2005); Little v. United States, 96 A.F.T.R.2d (RIA) 2005-7086 (M.D.N.C. 2005); Schultz v. United States, 95 A.F.T.R.2d (RIA) 2005-1977 (W.D. Mich. 2005); Smith v. Commissioner, 121 T.C.M. (CCH) 1195 (T.C. 2021), appeal dismissed, No. 21-71138, 2021 WL 6200759 (9th Cir. Oct. 12, 2021); Waltner v. Commissioner, T.C. Memo. 2015-146, T.C.M. (RIA) 2015-146 (2015); Hill v. Commissioner, T.C. Memo. 2014101, 108 T.C.M. (CCH) 12 (2014); Shirley v. Commissioner, T.C. Memo. 2014-10, 107 T.C.M. (CCH) 1057 (2014); Waltner v. United States, 98 Fed. Cl. 737 (2011); Oman v. Commissioner, T.C. Memo. 2010-276, 100 T.C.M. (CCH) 548 (2010); Blaga v. Commissioner, T.C. Memo. 2010-170, 100 T.C.M. (CCH) 91 (2010).

4. Contention: The IRS must prepare federal tax returns for a person who fails to file.

Proponents of this argument contend that section 6020(b) obligates the IRS to prepare and sign under penalties of perjury a federal tax return for a person who does not file a return. Those who subscribe to this contention claim that they are not required to file a return for themselves.

The Law: Section 6020(b) merely provides the IRS with a mechanism for determining the tax liability of a taxpayer who has failed to file a return. Section 6020(b) does not require the IRS to prepare or sign under penalties of perjury tax returns for persons who do not file, and it does not excuse the taxpayer from civil penalties or criminal liability for failure to file.

Relevant Case Law:

Jahn v. Commissioner, 431 F. App'x 210, 212 (3d Cir. 2011) – the Third Circuit held that even if the IRS prepares a return under section 6020(b), this "does not relieve the nonfiling taxpayer of his duty to file . . . and does not equate to a filed return unless signed by the taxpayer." The court found arguments to the contrary frivolous.

United States v. Cheek, 3 F.3d 1057, 1063 (7th Cir. 1993) – the Seventh Circuit upheld the district court's instruction to the jury that the defendant's belief that section 6020 permitted the Secretary of the Treasury to prepare a tax return for a person did not negate "in any way" the defendant's obligation to file a tax return.

In re Bergstrom, 949 F.2d 341, 343 (10th Cir. 1991) – the Tenth Circuit recognized that "[c]ourts have held that 26 U.S.C. § 6020(b) provides the IRS with some recourse if a taxpayer fails to file a return as required under 26 U.S.C. § 6012, but that it does not excuse a taxpayer from the filing requirement."

Schiff v. United States, 919 F.2d 830, 832 (2d Cir. 1990) – the Second Circuit rejected the taxpayer's argument that the IRS must prepare a substitute return pursuant to section 6020(b) before assessing deficient taxes, stating that "[t]here is no requirement that the IRS complete a substitute return."

Moore v. Commissioner, 722 F.2d 193, 196 (5th Cir. 1984) – the Fifth Circuit stated that "section [6020(b)] provides the Secretary with some recourse should a taxpayer fail to fulfill his statutory obligation to file a return, and does

not supplant the taxpayer's original obligation to file established by 26 U.S.C. § 6012."

Stewart v. Commissioner, T.C. Memo. 2005-212, 90 T.C.M. (CCH) 269 (2005) – the court found that the IRS need not prepare a substitute return in order to determine a deficiency for a taxpayer who has not filed a return for the year at issue.

Other Cases:

United States v. Barnett, 945 F.2d 1296 (5th Cir. 1991); Smith v. Commissioner, 118 T.C.M. (CCH) 208 (T.C. 2019), aff'd sub nom. Smith, v. Commissioner, No. 20-70698, 2022 WL 576011 (9th Cir. Feb. 25, 2022).

5. Contention: Compliance with an administrative summons issued by the IRS is voluntary.

Some summoned parties may assert that they are not required to respond to or comply with an administrative summons issued by the IRS. Proponents of this position argue that a summons thus can be ignored. The Second Circuit's opinion in Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005) ("Schulz II"), discussed below, is often inappropriately cited to support this proposition.

The Law: A summons is an administrative device with which the IRS can summon persons to appear, testify, and produce documents. The IRS is statutorily authorized to inquire about any person who may be liable to pay any internal revenue tax, and to summon a witness to testify or to produce books, papers, records, or other data that may be relevant or material to an investigation. I.R.C. § 7602; United States v. Arthur Young & Co., 465 U.S. 805, 816 (1984); United States v. Powell, 379 U.S. 48 (1964). Sections 7402(b) and 7604(a) of the Internal Revenue Code grant jurisdiction to district courts to enforce a summons, and section 7604(b) governs the general enforcement of summonses by the IRS.

Section 7604(b) allows courts to issue attachments, consistent with the law of contempt, to ensure attendance at an enforcement hearing "[i]f the taxpayer has contumaciously refused to comply with the administrative summons and the [IRS] fears he may flee the jurisdiction[.]" Powell, 379 U.S. at 58 n.18; see also Reisman v. Caplin, 375 U.S. 440, 448–49 (1964) (noting that section 7604(b) actions are in the nature of contempt proceedings against persons who "wholly made default or contumaciously refused to comply" with an

administrative summons issued by the IRS). Under section 7604(b), the courts may also impose contempt sanctions for disobedience of an IRS summons.

Failure to comply with an IRS administrative summons also could subject the non-complying individual to criminal penalties, including fines and imprisonment. I.R.C. § 7210. While the Second Circuit held in Schulz II that, for due process reasons, the government must seek judicial review and enforcement of the underlying summons and to provide an intervening opportunity to comply with a court order of enforcement before seeking sanctions for noncompliance, the court's opinion did not foreclose the availability of prosecution under section 7210.

Relevant Case Law:

Schulz v. IRS, 413 F.3d 297, 304 (2d Cir. 2005) ("Schulz II") – the Second Circuit upheld its prior per curiam opinion, reported at Schulz v. IRS, 395 F.3d 463 (2d Cir. 2005) ("Schulz I"), and held that, based upon constitutional due process concerns, an indictment under section 7210 shall not lie and contempt sanctions under section 7604(b) shall not be levied based on disobedience of an IRS summons until that summons has been enforced by a federal court order and the summoned party, after having been given a reasonable opportunity to comply with the court's order, has refused. The court noted that "[n]either this opinion nor Schulz I prohibits the issuance of pre-hearing attachments consistent with due process and the law of contempts."

United States v. Becker, 58-1 U.S.T.C. ¶ 9403 (S.D.N.Y. 1958) – when Becker failed to produce certain books and records specified in an IRS summons, claiming that they had been destroyed by fire, the court found, based upon the evidence (including the fact that some of the specified books were subsequently produced in compliance with a grand jury subpoena), that Becker willfully and knowingly neglected to produce information called for by a summons in violation of section 7210.

Other Cases:

United States v. Sanders, 110 A.F.T.R.2d (RIA) 2012-5910 (S.D. Ill. 2011).

B. The Meaning of Income: Taxable Income and Gross Income

1. Contention: Wages, tips, and other compensation received for personal services are not income.

This argument asserts that wages, tips, and other compensation received for personal services are not income, arguing there is no taxable gain when a person "exchanges" labor for money. Under this theory, wages are not taxable income because people have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed. A variation of this argument misconstrues section 1341—which deals with computations of tax where a taxpayer restores a substantial amount held under claim of right— to claim a deduction for personal services rendered.

Another similar argument asserts that wages are not subject to taxation where individuals have obtained funds in exchange for their time. Under this theory, wages are not taxable because the Code does not specifically tax "time-reimbursement transactions." Some individuals or groups argue that the Sixteenth Amendment to the United States Constitution did not authorize a tax on wages and salaries, but only on gain or profit.

The Law: For federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Any income, from whatever source, is presumed to be income under section 61, unless the taxpayer can establish that it is specifically exempted or excluded. See Reese v. United States, 24 F.3d 228, 231 (Fed. Cir. 1994) ("[A]n abiding principle of federal tax law is that, absent an enumerated exception, gross income means all income from whatever source derived."). In Rev. Rul. 2007-19, 2007-1 C.B. 843, and in Notice 2010-33, 2010-17 I.R.B. 609, the IRS advised taxpayers that wages and other compensation received in exchange for personal services are taxable income and warned of the consequences of making frivolous arguments to the contrary.

Section 1341 and the court opinions interpreting it require taxpayers to return funds previously reported as income before they can claim a deduction under claim of right. To have the right to a deduction, the taxpayer should appear to have had an unrestricted right to the income in question, but had to return the money. See Dominion Resources, Inc. v. United States, 219 F.3d 359 (4th Cir. 2000). The IRS, in Rev. Rul. 2004-29, 2004-1 C.B. 627, warned taxpayers of the consequences of frivolously claiming the section 1341 deduction when the taxpayer has not repaid an amount previously reported as income.

All compensation for personal services, no matter what the form of payment, must be included in gross income. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed or to be performed in the future. Criminal and civil penalties have been imposed against individuals who rely upon this frivolous argument.

Though a handful of taxpayers who were criminally charged with violations of the internal revenue laws have avoided conviction, taxpayers should not mistake those few cases as indicative that frivolous positions that fail to yield criminal convictions are legitimate or that because one taxpayer escaped conviction, taxpayers are protected from sanctions resulting from noncompliance. While a few defendants have prevailed, the vast majority are convicted. Furthermore, even if a taxpayer is acquitted of criminal charges of noncompliance with federal tax laws, the IRS may pursue any underlying tax liability and is not barred from determining civil penalties. See Helvering v. Mitchell, 303 U.S. 391 (1938); Price v. Commissioner, T.C. Memo. 1996-204, 71 T.C.M. (CCH) 2884 (1996).

Relevant Case Law:

Cheek v. United States, 498 U.S. 192, 204–05 (1991) – the Supreme Court reversed and remanded Cheek's conviction of willfully failing to file federal income tax returns and willfully attempting to evade income taxes on the basis of erroneous jury instructions. The Court noted, however, that Cheek's argument that he should be acquitted because he believed in good faith that the income tax law is unconstitutional "is unsound, not because Cheek's constitutional arguments are not objectively reasonable or frivolous, which they surely are, but because the [law regarding willfulness in criminal cases] does not support such a position." Id. On remand, Cheek was convicted on all counts and sentenced to jail for a year and a day. Cheek v. United States, 3 F.3d 1057, 1059 (7th Cir. 1993).

Commissioner v. Kowalski, 434 U.S. 77 (1977) – the Supreme Court found that payments are considered income where the payments are undeniably accessions to wealth, clearly realized, and over which a taxpayer has complete dominion.

Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429–30 (1955) – referring to the statute's words "income derived from any source whatever," the Supreme Court stated, "this language was used by Congress to exert in this field 'the full measure of its taxing power.'. . . And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."

Swanson v. United States, 799 F. App'x 668, 670 (11th Cir.), cert. denied, 140 S. Ct. 1270, 206 L. Ed. 2d 257 (2020) – the Eleventh Circuit rejected as frivolous arguments that there is no gain in compensation for labor because the value of the compensation equals the value of the labor.

Richmond v. Commissioner, 474 F. App'x 754, 755 (10th Cir. 2012) – the Tenth Circuit noted that "it is well-settled that wages and interest payments constitute taxable income" and rejected the petitioner's argument to the contrary as "completely lacking in legal merit and patently frivolous."

Callahan v. Commissioner, 334 F. App'x 754, 755 (7th Cir. 2009) – the Seventh Circuit rejected the petitioner's argument that only "the gain from wages" (not wages themselves) is taxable, characterizing the argument as "beyond frivolous."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991) – in rejecting the taxpayer's argument that the United States' revenue laws do not impose a tax on income, the Seventh Circuit stated that the "Internal Revenue Code imposes a tax on all income."

United States v. Connor, 898 F.2d 942, 943–44 (3d Cir. 1990) – the Third Circuit stated that "[e]very court which has ever considered the issue has unequivocally rejected the argument that wages are not income."

Stelly v. Commissioner, 761 F.2d 1113 (5th Cir. 1985) – the Fifth Circuit imposed double costs and attorney's fees on the taxpayers for bringing a frivolous appeal and rejected their argument that taxing wage and salary income is a violation of the constitution because compensation for labor is an exchange rather than gain.

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the Eighth Circuit upheld conviction and fines imposed for willfully failing to file tax returns, stating that the taxpayer's contention that wages and salaries are not income within the meaning of the Sixteenth Amendment is "totally lacking in merit."

Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1981) – the Fifth Circuit rejected as "meritless" the taxpayer's contention that the "exchange of services for money is a zero-sum transaction."

United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) – the Ninth Circuit affirmed Romero's conviction for willfully failing to file tax returns, stating that "[his] proclaimed belief that he was not a 'person' and that the wages he earned as a carpenter were not 'income' is fatuous as well as obviously incorrect."

Sumter v. United States, 61 Fed. Cl. 517, 523 (2004) – the court found Ms. Sumter's "claim of right" argument "devoid of any merit" stating that section 1341 only applies to situations in which the claimant is compelled to return the taxed item because of a mistaken presumption that the right held was unrestricted and, thus, the item was previously reported, erroneously, as taxable income. Section 1341 was inapplicable here because she had a continuing, unrestricted claim of right to her salary income and had not been compelled to repay that income in a later tax year.

Carskadon v. Commissioner, T.C. Memo. 2003-237, 86 T.C.M. (CCH) 234, 236 (2003) – the court rejected the taxpayer's frivolous argument that "wages are not taxable because the Code, which states what is taxable, does not specifically state that 'time reimbursement transactions,' a term of art coined by [taxpayers], are taxable." The court imposed a $2,000 penalty against the taxpayers for raising "only frivolous arguments which can be characterized as tax protester rhetoric."

Other Cases:

Jacobsen v. Commissioner, 551 F. App'x 950 (10th Cir. 2014); Garber v. Commissioner, 500 F. App'x 540 (7th Cir. 2013); United States v. Becker, 965 F.2d 383 (7th Cir. 1992); United States v. White, 769 F.2d 511 (8th Cir. 1985); United States v. Bigley, 119 A.F.T.R.2d 2017-1792 (D. Ariz. 2017); United States v. Jones, No. 14-CV-0227, 2015 WL 6942071 (D. Minn. Nov. 10, 2015) aff'd, 670 F. App'x 907 (8th Cir. 2016); United States v. Hopkins, 927 F. Supp. 2d 1120 (D.N.M. 2013); United States v. Reading, 110 A.F.T.R.2d 2012-5965 (D. Ariz. 2012); Abdo v. United States, 234 F. Supp. 2d 553 (M.D.N.C. 2002); Green v. Commissioner, T.C. Memo. 2016-67, 111 T.C.M. (CCH) 1299 (2016); Leyshon v. Commissioner, T.C. Memo 2015-104, 109 T.C.M. (CCH) 1535 (2015); Shakir v. Commissioner, T.C. Memo. 2015-147, 110 T.C.M. (CCH) 137 (2015); Snow v. Commissioner, T.C. Memo. 2013-114, 105 T.C.M. (CCH) 1680 (2013); O'Brien v. Commissioner, T.C. Memo. 2012-326, 104 T.C.M. (CCH) 620 (2012); Pugh v. Commissioner, T.C. Memo. 2009-138, 97 T.C.M. (CCH) 1791 (2009); Abrams v. Commissioner, 82 T.C. 403 (1984); Reading v. Commissioner, 70 T.C. 730 (1978).

2. Contention: Only foreign-source income is taxable.

Some individuals and groups maintain that there is no federal statute imposing a tax on income derived from sources within the United States by citizens or residents of the United States. They argue instead that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. The

premise for this argument is a misreading of sections 861, et seq., and 911, et seq., as well as the regulations under those sections. These frivolous assertions are contrary to well-established legal precedent.

The Law: As stated above, for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Further, Treas. Reg. § 1.1-1(b) provides, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." Sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable nor determine or define gross income.

The IRS has warned taxpayers of the consequences of making these frivolous arguments. Rev. Rul. 2004-28, 2004-1 C.B. 624 (discussing section 911); Rev. Rul. 2004-30, 2004-1 C.B. 622 (discussing section 861); Notice 2010-33, 201017 I.R.B. 609.

Some groups and individuals have adopted a variation of this argument and argue that income derived within the United States is actually foreign earned income and then they claim the foreign earned income exclusion. This contention has been rejected as frivolous by the courts.

Relevant Case Law:

United States v. Ambort, 405 F.3d 1109 (10th Cir. 2005) – the Tenth Circuit affirmed the conviction and 108-month sentence of Ernest G. Ambort for willfully aiding and assisting in preparing false income tax returns, specifically for seminars he conducted during which he falsely instructed the attendees that they could claim to be nonresident aliens with no domestic-source income, regardless of place of birth, so that they were exempt from most federal income taxes.

Webb v. United States, 100 A.F.T.R.2d (RIA) 2007-6290 (E.D.N.Y 2007) – the court characterized the argument that income derived within "the 50 states" is foreign sourced income as "an absurd proposition" that is as absurd as arguing that "the State of Illinois is not part of the United States" and as nothing more "than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions."

Great-West Life Assurance Co. v. United States, 678 F.2d 180, 183 (Ct. Cl.

1982) – the court stated that "[t]he determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under sections 1 and 11, respectively, on their worldwide income."

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the taxpayer's argument that income received from sources within the United States is not taxable income, stating that "[t]he 861 argument is contrary to established law and, for that reason, frivolous." The court imposed sanctions against the taxpayer as well as against the taxpayer's attorney in the respective amounts of $15,000 and $10,500 for making such groundless arguments.

Corcoran v. Commissioner, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002) – the court rejected the taxpayers' argument that their income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States." The court further required them to pay a $2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

Williams v. Commissioner, 114 T.C. 136, 138–39 (2000) – the court rejected the taxpayer's argument that his income was not from any of the sources listed in Treas. Reg. § 1.861-8(a), characterizing it as "reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts."

Other Cases:

Carmichael v. United States, 128 F. App'x 109 (Fed. Cir. 2005); Hillecke v. United States, 104 A.F.T.R.2d (RIA) 2009-5267 (D. Or. 2009); United States v. Thompson, 103 A.F.T.R.2d (RIA) 2009-2421 (E.D. Cal. 2009); Rodriguez v. Commissioner, T.C. Memo. 2009-92, 97 T.C.M. (CCH) 1482 (2009); Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000); Aiello v. Commissioner, T.C. Memo. 1995-40, 69 T.C.M. (CCH) 1765 (1995); Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201 (1993).

3. Contention: Federal Reserve Notes are not income.

Proponents of this contention assert that Federal Reserve Notes currently used in the United States are not valid currency and cannot be taxed because Federal Reserve Notes are not gold or silver and may not be exchanged for gold or silver. This argument misinterprets Article I, Section 10 of the United

States Constitution. The courts have rejected this argument on numerous occasions.

The Law: Congress is empowered "[t]o coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures." U.S. Const. Art. I, § 8, cl. 5. Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress's power to declare the form of legal tender. See 31 U.S.C. § 5103; 12 U.S.C. § 411. In an opinion affirming a conviction for willfully failing to file a return and rejecting the argument that Federal Reserve Notes are not subject to taxation, the court stated that "Congress has declared federal reserve notes legal tender . . . and federal reserve notes are taxable dollars." United States v. Rifen, 577 F.2d 1111, 1112 (8th Cir. 1978).

Relevant Case Law:

Sanders v. Freeman, 221 F.3d 846, 855 (6th Cir. 2000) – finding that the defendant's argument "that imposing sales tax on the sale of legal-tender silver and gold coins unconstitutionally interferes with Congress's exclusive power to coin money is simply untenable," the Sixth Circuit recognized that "most, if not all, of the courts that have considered this issue have held that imposing sales tax on the purchase of gold and silver coins and bullion for cash does not infringe on Congress's constitutional power to coin and regulate currency."

United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984) – the Ninth Circuit upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that "Federal Reserve Notes are not valid currency, cannot be taxed, and are merely 'debts.'"

Jones v. Commissioner, 688 F.2d 17, 18 (6th Cir. 1982) – the Sixth Circuit found the taxpayer's claim that his wages were paid in "depreciated bank notes" clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980) – the Tenth Circuit affirmed taxpayer's conviction for willfully failing to file a return and rejected the taxpayer's argument that "the Federal Reserve Notes in which he was paid were not lawful money within the meaning of Art. 1, § 8, United States Constitution."

United States v. Daly, 481 F.2d 28, 30 (8th Cir. 1973) – the Eighth Circuit rejected as "clearly frivolous" the assertion "that the only 'Legal Tender Dollars' are those which contain a mixture of gold and silver and that only those dollars

may be constitutionally taxed" and affirmed Daly's conviction for willfully failing to file a return.

United States v. Molen, 110 A.F.T.R.2d 2012-5242 (E.D. Cal. 2012) – the court dismissed as frivolous the taxpayer's arguments "that federal reserve notes, i.e., U.S. dollars, are 'worthless securities' and cannot create taxable income" and that "federal reserve notes are merely 'debts' that cannot be taxed."

Other Cases:

United States v. Davenport, 824 F.2d 1511 (7th Cir. 1987); United States v. Benson, 592 F.2d 257 (5th Cir. 1979); United States v. Schmitz, 542 F.2d 782 (9th Cir. 1976).

4. Contention: Military retirement pay does not constitute income.

Eligible, retired United States military personnel may receive military retirement pay (MRP) from the agency responsible for disbursing these payments, the Defense Finance and Accounting Service (DFAS). Some individuals argue that MRP does not constitute income for federal income tax purposes.

The Law: The Internal Revenue Code defines gross income as "all income from whatever source derived, including . . . pensions." I.R.C. § 61(a)(11). Military retirement pay is pension income within the meaning of section 61. Wheeler v. Commissioner, 127 T.C. 200, 205 n.11 (2006); see also Eatinger v. Commissioner, T.C. Memo. 1990-310.

Relevant Case Law:

Wheeler v. Commissioner, T.C. Memo. 2010-188, 100 T.C.M. (CCH) 180 (2010) – the Tax Court imposed a $25,000 penalty under section 6673(a)(1) because the taxpayer continued to argue that his military retirement pay was not income and that he did not need to file federal income tax returns.

Mathews v. Commissioner, T.C. Memo. 2010-226, 100 T.C.M. (CCH) 336 (2010) – in addition to penalties for failure to file and pay taxes, the Tax Court imposed a $500 penalty under section 6673(a)(1) against Mr. Mathews for his "frivolous" argument that his military retirement pay, including an amount garnished by the state for child support, was not income.

C. The Meaning of Certain Terms Used in the Internal Revenue Code

1. Contention: Taxpayer is not a "citizen" of the United States and thus is not subject to the federal income tax laws.

Some individuals argue that they have rejected citizenship in the United States in favor of state citizenship; therefore, they are relieved of their federal income tax obligations. A variation of this argument is that a person is a free born citizen of a particular state and thus was never a citizen of the United States. The underlying theme of these arguments is the same: the person is not a United States citizen and is not subject to federal tax laws because only United States citizens are subject to these laws.

The Law: The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment therefore establishes simultaneous state and federal citizenship. Claims that individuals are not citizens of the United States but are solely citizens of a sovereign state and not subject to federal taxation have been uniformly rejected by the courts. The IRS has warned taxpayers of the consequences of making this frivolous argument. Rev. Rul. 2007-22, 2007-1 C.B. 866; Notice 2010-33, 2010-17 I.R.B. 609.

In a variation of this argument, taxpayers argue that although they are citizens of the United States, for the purposes of the Internal Revenue Code they are non-resident aliens and are subject to taxation only on income that is connected with the conduct of a trade or business. The Eleventh Circuit rejected this contention as frivolous.

Relevant Case Law:

Taliaferro v. Freeman, 595 F. App'x 961, 962 (11th Cir. 2014) – the Eleventh Circuit upheld the lower court's dismissal of Mr. Taliaferro's complaint seeking to enjoin the IRS from collecting taxes assessed against him. The court rejected as meritless his argument that, despite his U.S. citizenship, he is, "for purposes of the tax code, a nonresident alien who is subject to taxation only on income that is connected with the conduct of a trade or business."

United States v. Bowden, 402 F. App'x 967 (5th Cir. 2010) – in denying an appeal of a sentence for tax evasion, the Fifth Circuit rejected the taxpayer's argument that he was a sovereign and not subject to the laws of the United States.

United States v. Drachenberg, 623 F.3d 122, 125 (2d Cir. 2010) – the Second Circuit affirmed Drachenberg's conviction for tax evasion and conspiracy to defraud the United States and rejected his argument that the federal courts lacked jurisdiction because he was not a citizen of the United States.

Upton v. IRS, 104 F.3d 543, 545 (2d Cir.1997) – the Second Circuit characterized taxpayer's argument that he was a citizen of a state and therefore not a citizen of the United States as "barely worth a footnote."

United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) – the Seventh Circuit rejected "shop worn" argument that defendant is a citizen of the "Indiana State Republic" and therefore an alien beyond the jurisdictional reach of the federal courts.

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the Eighth Circuit rejected the Gerads' contention that they were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protester arguments."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991) – the Seventh Circuit affirmed a tax evasion conviction and rejected Sloan's argument that the federal tax laws did not apply to him because he was a "freeborn, natural individual, a citizen of the State of Indiana, and a 'master' – not 'servant' – of his government."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987) – the Eleventh Circuit found Ward's contention that he was not an "individual" located within the jurisdiction of the United States to be "utterly without merit" and affirmed his conviction for tax evasion.

Wells v. United States, 129 A.F.T.R.2d 2022-609 (Fed. Cl. 2022) – the court dismissed the taxpayer's argument that she is a sovereign citizen and "not subject to United States taxation," as "frivolous" and "clearly baseless."

Waltner v. Commissioner, T.C. Memo. 2014-35, 107 T.C.M. (CCH) 1189 (2014) – the court dismissed the possibility of being a citizen of a state but not the United States as "nonsensical" and "backwards; one cannot be a citizen of a State without also being a citizen of the United States. Indeed, citizenship in the United States is 'paramount and dominant' over State citizenship."

Kay v. Commissioner, T.C. Memo. 2010-59, 99 T.C.M. (CCH) 1236 (2010) – the court imposed a $500 penalty under section 6673(a) against James Kay

for raising frivolous arguments in the proceeding, including that he "was not born a [U.S.] taxpayer" and that the United States may not tax him because "the United States is a corporation" to which he holds no "allegiance."

Other Cases:

United States v. Sileven, 985 F.2d 962 (8th Cir. 1993); Nevius v. Tomlinson, 113 A.F.T.R.2d 2014-1872 (W.D. Miss. 2014); O'Driscoll v. IRS, No. CIV. A. 912074, 1991 WL 133417 (E.D. Pa. July 16, 1991); Bruhwiler v. Commissioner, T.C. Memo. 2016-18, 111 T.C.M. (CCH) 1071 (2016); Carlson v. Commissioner, T.C. Memo. 2012-76, 103 T.C.M. (CCH) 1408 (2012); Callahan v. Commissioner, T.C. Memo. 2010-201, 100 T.C.M. (CCH) 225 (2010); Rice v. Commissioner, T.C. Memo. 2009-169, 98 T.C.M. (CCH) 40 (2009); Knittel v. Commissioner, T.C. Memo. 2009-149, 97 T.C.M. (CCH) 1837 (2009); Bland-Barclay v. Commissioner, T.C. Memo. 2002-20, 83 T.C.M. (CCH) 1119, 1121 (2002); Marsh v. Commissioner, T.C. Memo 2000-11, 79 T.C.M. (CCH) 1327 (2000); Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202-03 (1993).

2. Contention: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves

Some individuals and groups argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws.

The Law: The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves. "[F]or nearly a century, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." Taliaferro v. Freeman, 595 F. App'x 961, 963 (11th Cir. 2014) (internal brackets and citation omitted). Courts have uniformly rejected this frivolous contention, and the IRS has warned taxpayers of the consequences of making this frivolous argument. Rev. Rul. 2006-18, 2006-1 C.B. 743; Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

United States v. Cooper, 170 F.3d 691 (7th Cir. 1999) – the Seventh Circuit sanctioned Cooper for filing a frivolous appeal wherein he argued that only residents of Washington, D.C. and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States.

United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994) – the Sixth Circuit rejected the "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws.

In re Becraft, 885 F.2d 547, 549 n.2 (9th Cir. 1989) – the Ninth Circuit imposed monetary damages on Becraft, an attorney, based on his advocacy of frivolous claims, such as that federal laws apply only to United States territories and the District of Columbia, which the court found had "no semblance of merit."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987) – the Eleventh Circuit rejected as a "twisted conclusion" the contention "that the United States has jurisdiction over only Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States," and affirmed a conviction for tax evasion.

Wnuck v. Commissioner, 136 T.C. 498 (2011) – the court described in detail why a misreading of an employment tax provision that includes Puerto Rico, the Virgin Islands, Guam, and American Samoa within the term "United States" was frivolous and imposed a $5,000 penalty under section 6673 for maintaining this and other frivolous arguments.

Other Cases:

Waltner v. Commissioner, T.C. Memo. 2014-35, 107 T.C.M. (CCH) 1189 (2014); Tiernan v. United States, 113 Fed. Cl. 528 (2013); Holmes v. Commissioner, T.C. Memo. 2010-42, 99 T.C.M. (CCH) 1165 (2010); Ulloa v. Commissioner, T.C. Memo. 2010-68, 99 T.C.M. (CCH) 1280 (2010).

3. Contention: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws.

Some individuals and groups maintain that they are not a "person" as defined by the Internal Revenue Code, and thus not subject to the federal income tax laws. This argument is based on a tortured misreading of the Code. In a variation of this argument, some individuals and groups argue that IRS correspondences addressed to taxpayers in all capital letters are not valid.

Proponents of this argument claim there is a legal distinction under state law that entities such as corporations are legally addressed in this manner and since taxpayers are not "fictional legal entities," the correspondence is not valid.

The Law: The Internal Revenue Code clearly defines "person" and sets forth which persons are subject to federal taxes. Section 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax and section 7701(a)(1) defines "person" to include an individual, trust, estate, partnership, or corporation. Arguments that an individual is not a "person" within the meaning of the Internal Revenue Code have been uniformly rejected. A similar argument with respect to the term "individual" has also been rejected. The IRS has warned taxpayers of the consequences of making this frivolous argument. Rev. Rul. 2007-22, 2007-1 C.B. 866; Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

Young v. Commissioner, 551 F. App'x 229, 230 (8th Cir. 2014) – the Eighth Circuit rejected as "meritless" the taxpayer's argument that the Internal Revenue Code does not make individuals liable for the payment of federal income taxes, imposing an $8,000 sanction for his frivolous claims.

United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986) – the Third Circuit affirmed Karlin's conviction for failure to file income tax returns and rejected his contention that he was "not a 'person' within the meaning of 26 U.S.C. § 7203" as "frivolous and requir[ing] no discussion."

United States v. Studley, 783 F.2d 934, 937, 937 n.3 (9th Cir. 1986) – in affirming a conviction for failure to file income tax returns, the Ninth Circuit rejected the taxpayer's contention that she was not subject to federal tax laws because she was "an absolute, freeborn, and natural individual" and noted that "this argument has been consistently and thoroughly rejected by every branch of the government for decades."

Biermann v. Commissioner, 769 F.2d 707, 708 (11th Cir. 1985) – the court said the claim that Biermann was not "a person liable for taxes" was "patently frivolous," and given the Tax Court's warning to Biermann that his positions would never be sustained in any court, awarded the government double costs plus attorney's fees.

Timmins v. Commissioner, T.C. Memo. 2017-86, 113 T.C.M. (CCH) 1412 (T.C. 2017) – the court rejected taxpayer's argument that he was merely an agent of the taxpayer as frivolous.

Balice v. Commissioner, T.C. Memo. 2015-46, 109 T.C.M. (CCH) 1220 (2015) – the taxpayer served interrogatories demanding that the IRS admit that he is not a "person" liable to taxes, among other frivolous contentions. The court granted the IRS a protective order excusing it from answering these frivolous interrogatories and imposed a $25,000 sanction against the taxpayer.

Waltner v. Commissioner, T.C. Memo. 2014-35, 107 T.C.M. (CCH) 1189 (2014) – the court rejected Steven Waltner's argument that he was not a "person" under section 6671 and imposed a $2,500 sanction against him for making frivolous arguments.

Holmes v. Commissioner, T.C. Memo. 2010-42, 99 T.C.M. (CCH) 1165 (2010) – the court dismissed as "frivolous and groundless" the taxpayer's claim that correspondences addressed to him in all capital letters are invalid because of "creat[ing] a false legal impression that he is a 'fictional legal entity' and not entitled to his constitutional rights," and imposed a penalty of $10,000 under I.R.C. section 6673.

Smith v. Commissioner, T.C. Memo. 2000-290, 80 T.C.M. (CCH) 377, 378-89 (2000) – the court described the argument that Smith "is not a 'person liable' for tax" as frivolous, sustained failure to file penalties, and imposed a penalty for maintaining "frivolous and groundless positions."

Other Cases:

United States v. Rhodes, 921 F. Supp. 261, 264 (M.D. Pa. 1996); McCoy v. IRS, 88 A.F.T.R.2d (RIA) 5909 (D. Col. 2001).

4. Contention: The only "employees" subject to federal income tax are employees of the federal government.

This contention asserts that the federal government can tax only employees of the federal government; therefore, employees in the private sector are immune from federal income tax liability. This argument is based on a misinterpretation of section 3401, which imposes responsibilities on employers to withhold tax from "wages." That section establishes the general rule that "wages" include all remuneration for services performed by an employee for his employer. Section 3401(c) goes on to state that the term "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof . . . ."

The Law: Section 3401(c) defines "employee" and states that the term

"includes an officer, employee or elected official of the United States . . . ." This language does not address how other employees' wages are subject to withholding or taxation. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Thus, the word "includes" as used in the definition of "employee" is a term of enlargement, not of limitation. It makes federal employees and officials a part of the definition of "employee," which generally includes private citizens. The IRS has warned taxpayers of the consequences of making this frivolous argument. Rev. Rul. 2006-18, 2006-1 C.B. 743.

Relevant Case Law:

Taliaferro v. Freeman, 595 F. App'x 961, 962–63 (11th Cir. 2014) – the Eleventh Circuit rejected as frivolous the taxpayer's argument that the federal income tax applies only to federal employees, and ordered sanctions against him up to and including double the government's costs.

Montero v. Commissioner, 354 F. App'x 173 (5th Cir. 2009) – the Fifth Circuit affirmed a $20,000 section 6673(a) penalty against the taxpayer for advancing frivolous arguments that he is not an employee earning wages as defined by sections 3121 and 3401.

Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986) – the First Circuit imposed sanctions on the taxpayer for bringing a frivolous appeal and rejected his attempt to recover a civil penalty for filing a frivolous return, stating that "to the extent [he] argues that he received no 'wages'. . . because he was not an 'employee' within the meaning of 26 U.S.C. § 3401(c), that contention is meritless. . . .The statute does not purport to limit withholding to the persons listed therein."

United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) – calling the instructions the taxpayer wanted given to the jury "inane," the court said, "th[e] instruction which indicated that under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute. It is obvious within the context of [the law] the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."

United States v. Hendrickson, 100 A.F.T.R.2d (RIA) 2007-5395 (E.D. Mich. 2007) – the court permanently barred Peter and Doreen Hendrickson, who filed tax returns on which they falsely reported their income as zero, from filing tax returns and forms based on frivolous claims in Hendrickson's book,

"Cracking the Code," that only federal, state, or local government workers are liable for federal income tax or subject to the withholding of federal taxes.

Briggs v. Commissioner, T.C. Memo 2016-86, 111 T.C.M. (CCH) 1389 (2016) – the court rejected the taxpayer's frivolous argument that wages from private-sector employers are not "income" for Federal income tax purposes. The court imposed a $3,000 penalty against the taxpayer for "persist(ing) in raising frivolous arguments."

Waltner v. Commissioner, T.C. Memo. 2014-35, 107 T.C.M. (CCH) 1189 (2014) – the court debunked the argument that only federal employees are taxed and imposed $2,500 sanction against the taxpayer for making frivolous arguments contained in Peter Hendrickson's book "Cracking the Code."

Other Cases:

Peth v. Breitzmann, 611 F. Supp. 50 (E.D. Wis. 1985); Pabon v. Commissioner, T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813 (1994).

D. Constitutional Amendment Claims

1. Contention: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.

Some individuals or groups claim that taxpayers may refuse to pay federal income taxes based on their religious or moral beliefs or on an objection to using taxes to fund certain government programs. In support of this frivolous position, these persons mistakenly invoke the First Amendment and, often, the Religious Freedom Restoration Act ("RFRA").

The Law: The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment, however, does not provide a right to refuse to pay income taxes on religious or moral grounds or because taxes are used to fund government programs opposed by the taxpayer. Likewise, it is well settled that RFRA does not afford a right to avoid payment of taxes for religious reasons. The First Amendment does not protect commercial speech or speech that aids or incites taxpayers to unlawfully refuse to pay federal income taxes, including speech that promotes abusive tax avoidance schemes.

Relevant Case Law:

United States v. Lee, 455 U.S. 252, 260 (1982) – the Supreme Court held that the broad public interest in maintaining a sound tax system is of such importance that religious beliefs in conflict with the payment of taxes provide no basis for refusing to pay, stating that "[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief."

Jenkins v. Commissioner, 483 F.3d 90 (2d Cir. 2007) – upholding the imposition of a $5,000 frivolous return penalty against the taxpayer, the Second Circuit held that the collection of tax revenues for expenditures that offended the religious beliefs of individual taxpayers did not violate the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act of 1993, or the Ninth Amendment.

United States v. Indianapolis Baptist Temple, 224 F.3d 627 (7th Cir. 2000) – the Seventh Circuit rejected defendant's Free Exercise challenge to the federal employment tax as those laws were not restricted to the defendant or other religion-related employers generally, and there was no indication that they were enacted for the purpose of burdening religious practices.

Adams v. Commissioner, 170 F.3d 173 (3d Cir. 1999) – the Third Circuit affirmed tax deficiencies and penalties for failure to file tax returns and pay tax, holding that the Religious Freedom Restoration Act did not require that the federal income tax accommodate Adams' religious beliefs that payment of taxes to fund the military is against the will of God, and that her beliefs did not constitute reasonable cause for purposes of the penalties.

United States v. Ramsey, 992 F.2d 831, 833 (8th Cir. 1993) – the Eighth Circuit rejected taxpayer's argument that filing federal income tax returns and paying federal income taxes violated his pacifist religious beliefs because he "ha[d] no First Amendment right to avoid federal income taxes on religious grounds."

Wall v. United States, 756 F.2d 52, 53 (8th Cir. 1985) – the Eighth Circuit upheld the imposition of a $500 frivolous return penalty against Wall for taking a "war tax deduction" on his federal income tax return based on his religious convictions, stating the "necessities of revenue collection through a sound tax system raise governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds."

United States v. Peister, 631 F.2d 658 (10th Cir. 1980) – the Tenth Circuit found Peister's First Amendment right to freedom of religion was not violated and rejected his argument that he was exempt from income tax based on his vow of poverty after he became minister of a church he formed.

Salzer v. Commissioner, T.C. Memo. 2014-188, 108 T.C.M. (CCH) 284 (September 15, 2014) – the court found Salzer's justification for not paying taxes because he objected to the "socialist" policies of the government frivolous, holding that "[t]he legal duty to file a return exists independent of a taxpayer's personal political, economic, social, or religious convictions."

Other Cases:

Droz v. Commissioner, 48 F.3d 1120 (9th Cir. 1995); Boardman v. Shulman, 110 A.F.T.R.2d (RIA) 2012-6987 (E.D. Cal. 2012); United States v. Ogilvie, No. 3:12–CR–00121–LRH–WGC, 2013 WL 6210645 (D. Nev. Nov. 27, 2013); Gardner v. Commissioner, T.C. Memo. 2017-107, 113 T.C.M. (CCH) 1482 (2017).

2. Contention: IRS summonses violate the Fourth Amendment protections against search and seizure.

Some individuals or groups assert that summonses sent by the IRS to taxpayers and to third parties are per se violations of the Fourth Amendment's prohibition against warrantless search and seizure and are therefore unconstitutional.

The Law: The Fourth Amendment to the United States Constitution provides the "right of the people to be secure in their persons, houses, papers, and effects" and prohibits "unreasonable searches and seizures . . . ." The United States Supreme Court has held repeatedly that "the Fourth Amendment does not prohibit the obtaining of information revealed to a third party[.]" United States v. Miller, 425 U.S. 435, 443 (1976). The Fourth Amendment also provides that "no Warrants shall issue" unless there is "probable cause." The United States Supreme Court has ruled that the IRS "need not meet any standard of probable cause to obtain enforcement of [IRS] summons." United States v. Powell, 379 U.S. 48, 52 (1964). Where the enforcement of an IRS summons is challenged, the IRS bears the initial burden of showing "good faith compliance with summons requirements," which may "be demonstrated by the affidavit of the IRS agent." United States v. Norwood, 420 F.3d 888, 892 (8th Cir. 2005).

Relevant Case Law:

United States v. Miller, 425 U.S. 435, 443 (1976) – the Supreme Court held that the "Fourth Amendment does not prohibit the obtaining of information revealed to a third party."

United States v. Powell, 379 U.S. 48, 51 (1964) – the Supreme Court held that "the Government need make no showing of probable cause to suspect fraud unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abusive use of the court's process."

Taliaferro v. Freeman, 595 F. App'x 961, 962–63 (11th Cir. 2014) – the Eleventh Circuit held that the taxpayer's contention that IRS levies violate the Fourth Amendment right to be free from unreasonable seizures was "simply without merit" and did not even warrant discussion and ordered sanctions against the taxpayer up to and including double the government's costs.

O'Brien v. Green, 114 A.F.T.R.2d (RIA) 2014-5613 (E.D. Va. 2014) – the court rejected O'Brien's Fourth Amendment arguments and characterized them as frivolous.

Nevius v. Tomlinson, 113 A.F.T.R.2d (RIA) 2014-1872 (W.D. Miss. 2014) – Nevius argued that IRS summons issued without probable cause of warrant violated the Fourth Amendment. The court rejected this argument, stating "IRS need not meet any standard of probable cause to obtain enforcement of [a] summons."

Lewis v. United States, 109 A.F.T.R.2d (RIA) 2012-1756 (E.D. Ca. 2012) – the court rejected Lewis's argument that summonses sent to third parties violated the Fourth Amendment, holding that "summonses issued by the IRS seeking documents in the possession of third-parties do not implicate petitioner's rights under the Fourth Amendment."

Other Cases:

Donaldson v. United States, 400 U.S. 517, 522 (1971); United States v. Feminist Fed. Credit Union, 620 F.2d 305 (6th Cir. 1980); United States v. Theep, 502 F.2d 797 (9th Cir. 1974); United States v. Galloway, No. 114CR00114DADBAM, 2017 WL 735730 (E.D. Cal. Feb. 24, 2017), aff'd, 802 F. App'x 247 (9th Cir. 2020).

3. Contention: Federal income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment.

Some individuals or groups assert that the collection of federal income taxes constitutes a "taking" of property without due process of law, in violation of the Fifth Amendment. Thus, any attempt by the IRS to collect federal income taxes owed by a taxpayer is unconstitutional.

The Law: The Fifth Amendment to the United States Constitution provides that a person shall not be "deprived of life, liberty, or property, without due process of law . . . ." The United States Supreme Court stated that "it is . . . well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring, upon the one hand, a taxing power, and taking the same power away, on the other, by the limitations of the due process clause." Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916). Further, the Supreme Court has upheld the constitutionality of the summary administrative procedures contained in the Internal Revenue Code against due process challenges on the basis that a post-collection remedy (e.g., a tax refund suit) exists and is sufficient to satisfy the requirements of constitutional due process. Phillips v. Commissioner, 283 U.S. 589, 595–97 (1931).

The Internal Revenue Code provides methods to ensure due process to taxpayers: (1) the "refund method," set forth in section 7422(e) and 28 U.S.C. §§ 1341 and 1346(a), in which a taxpayer must pay the full amount of the tax and then sue for a refund in a federal district court or in the United States Court of Federal Claims; and (2) the "deficiency method," set forth in section 6213(a), in which a taxpayer may, without paying the contested tax, petition the United States Tax Court to redetermine a tax deficiency asserted by the IRS. Courts have found that both methods provide constitutional due process.

In Rev. Rul. 2005-19, 2005-1 C.B. 819 and in Notice 2010-33, 2010-17 I.R.B. 609, the IRS discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to pursue a claim on these grounds.

For a discussion of frivolous tax arguments made in collection due process cases arising under sections 6320 and 6330, see Section II of this outline.

Relevant Case Law:

Flora v. United States, 362 U.S. 145, 175 (1960) – the Supreme Court held that a taxpayer must pay the full tax assessment before being able to file a refund suit in district court, noting that a person has the right to appeal an assessment to the Tax Court "without paying a cent."

Taliaferro v. Freeman, 595 F. App'x 961, 962–63 (11th Cir. 2014) – ordering sanctions against the taxpayer up to and including double the government's costs, the Eleventh Circuit held that the taxpayer's contention that IRS levies violate the Fifth Amendment right to due process was "simply without merit" and did not even warrant discussion.

Schiff v. United States, 919 F.2d 830, 832 (2d Cir. 1990) – the Second Circuit rejected a due process claim of a taxpayer who chose not to avail himself of the opportunity to appeal a deficiency notice to the Tax Court.

O'Brien v. Green, 114 A.F.T.R.2d (RIA) 2014-5613 (E.D. Va. 2014) – the court rejected as frivolous the taxpayer's claim that an IRS levy violated the Fifth Amendment.

Other Cases:
Rivas v. Commissioner, T.C. Memo. 2016-158, 112 T.C.M. (CCH) 247 (2016), appeal dismissed sub nom. Rivas v. Commissioner, No. 16-16365-C, 2017 WL 4842564 (11th Cir. Aug. 15, 2017).

4. Contention: Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

Some individuals or groups claim that taxpayers may refuse to file federal income tax returns, or may submit tax returns on which they refuse to provide any financial information, because they believe that their Fifth Amendment privilege against self-incrimination will be violated.

The Law: There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. As the Supreme Court has stated, a taxpayer cannot "draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." United States v. Sullivan, 274 U.S. 259, 264 (1927). The failure to comply with the filing and reporting requirements of the federal tax laws will not be excused based upon blanket assertions of the constitutional privilege against compelled self-incrimination under the Fifth Amendment.

The IRS has discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to pursue a claim on these grounds. Rev. Rul. 2005-19, 2005-1 C.B. 819; Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

Sochia v. Commissioner, 23 F.3d 941 (5th Cir. 1994) – the Fifth Circuit affirmed tax assessments and penalties for failure to file returns, failure to pay taxes, and filing a frivolous return and imposed sanctions for pursuing a frivolous case against taxpayers who, rather than provide any information on their tax return about income and expenses, claimed a Fifth Amendment privilege on each line calling for financial information.

United States v. Carlson, 617 F.2d 518, 523 (9th Cir. 1980) – Carlson asserted the Fifth Amendment on his 1974 and 1975 year-end tax returns; the Ninth Circuit held that "an individual who seeks to frustrate the tax laws by claiming too many withholding exemptions, with an eye to covering that crime and evading the tax return requirement by assertion of the Fifth Amendment, is not entitled to the amendment's protection."

United States v. Neff, 615 F.2d 1235, 1241 (9th Cir. 1980) – the Ninth Circuit affirmed a failure to file conviction, noting that the taxpayer "did not show that his response to the tax form questions would have been self-incriminating. He cannot, therefore, prevail on his Fifth Amendment claim."

United States v. Schiff, 612 F.2d 73, 83 (2d Cir. 1979) – the Second Circuit said that "the Fifth Amendment privilege does not immunize all witnesses from testifying. Only those who assert as to each particular question that the answer to that question would tend to incriminate them are protected. . . . [T]he questions in the income tax return are neutral on their face . . . . [h]ence privilege may not be claimed against all disclosure on an income tax return."

United States v. Brown, 600 F.2d 248, 252 (10th Cir. 1979) – the Tenth Circuit held that Brown made "an illegal effort to stretch the Fifth Amendment to include a taxpayer who wishes to avoid filing a return."

United States v. Daly, 481 F.2d 28, 30 (8th Cir. 1973) – the Eighth Circuit affirmed a failure to file conviction, rejecting the taxpayer's Fifth Amendment claim because of his "error in . . . his blanket refusal to answer any questions on the returns relating to his income or expenses."

Rader v. Commissioner, 143 T.C. No. 19 (2014) – the court overruled Rader's refusal to answer questions by "invoking his right, under the Fifth Amendment, not to 'be compelled in any criminal case to be a witness against himself.'" Imposing a $10,000 sanction on Rader, the Court held that "in order for an individual to validly claim the privilege against self-incrimination, there must be a 'real and appreciable danger' from 'substantial hazards of self-incrimination', and the individual must have 'reasonable cause to apprehend (such) danger from a direct answer to questions posed to him.'"

Other Cases:

Lund v. Chase Bank, 114 A.F.T.R.2d (RIA) 2014-5613 (D. Or. 2014); United States v. Edlefsen, 114 A.F.T.R.2d (RIA) 2014-6105 (D. Or. 2014).

5. Contention: Compelled compliance with the federal income tax laws is a form of servitude in violation of the Thirteenth Amendment.

This argument asserts that being compelled to comply with federal tax laws is a form of servitude in violation of the Thirteenth Amendment.

The Law: The Thirteenth Amendment to the United States Constitution prohibits slavery within the United States as well as imposing involuntary servitude, except as punishment for a crime of which a person shall have been duly convicted. "If the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954) (per curiam). Courts have consistently found arguments that taxation constitutes a form of involuntary servitude to be frivolous.

In Rev. Rul. 2005-19 2005-19, 2005-1 C.B. 819 and in Notice 2010-33, 2010-17 I.R.B. 609, the IRS discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

United States v. Drefke, 707 F.2d 978, 983 (8th Cir. 1983) – the Eighth Circuit affirmed the taxpayer's failure to file conviction and rejected his claim that the Thirteenth Amendment prohibited his imprisonment because that amendment "is inapplicable where involuntary servitude is imposed as punishment for a crime."

Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979) – the Eighth Circuit rejected the taxpayer's claim that the Internal Revenue Code results in involuntary servitude in violation of the Thirteenth Amendment.

Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972) – the Ninth Circuit rejected as meritless the argument that the requirements to keep records and to prepare and file tax returns violate taxpayers' Fifth Amendment privilege against self-incrimination and amount to involuntary servitude prohibited by the Thirteenth Amendment.

Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954) – the Tenth Circuit found the taxpayer's Thirteenth and Sixteenth Amendment claims "clearly unsubstantial and without merit" as well as "far-fetched and frivolous."

Wilbert v. IRS (In re Wilbert), 262 B.R. 571 (Bankr. N.D. Ga. 2001) – the court rejected the taxpayer's argument that taxation is a form of involuntary servitude prohibited by the Thirteenth Amendment.

Other Cases:

United States v. Moleski, Crim. No. 12–811 (FLW), 2014 WL 197907 (D. N.J. Jan. 13, 2014); Caton v. Hutson, 100 A.F.T.R.2d (RIA) 2007-6982 (M.D. Fla. 2007).

6. Contention: The federal income tax laws are unconstitutional because the Sixteenth Amendment to the United States Constitution was not properly ratified.

This argument is based on the premise that all federal income tax laws are unconstitutional because the Sixteenth Amendment was not officially ratified or because the State of Ohio was not properly a state at the time of ratification. Proponents mistakenly believe that courts have refused to address this issue.

The Law: The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. The Sixteenth Amendment was ratified by forty states, including Ohio (which became a state in 1803); see Bowman v. United States, 920 F. Supp. 623 n.1 (E.D. Pa. 1995) (discussing the 1953 joint Congressional resolution that confirmed Ohio's status as a state retroactive to 1803), and issued by proclamation in 1913. Shortly thereafter, two other states also ratified the Amendment. Under Article V of the Constitution, only three-fourths of the states are needed to ratify an Amendment. There were enough

states ratifying the Sixteenth Amendment even without Ohio to complete the number needed for ratification. Furthermore, after the Sixteenth Amendment was ratified, the Supreme Court upheld the constitutionality of the income tax laws. Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since then, courts have consistently upheld the constitutionality of the federal income tax.

In Rev. Rul. 2005-19, 2005-1 C.B. 819, and in Notice 2010-33, 2010-17 I.R.B. 609, the IRS discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

Sochia v. Commissioner, 23 F.3d 941 (5th Cir. 1994) – the Fifth Circuit held that defendant's appeals, which made Sixteenth Amendment challenges to income tax legislation, were frivolous and warranted sanctions.

Miller v. United States, 868 F.2d 236, 241–42 (7th Cir. 1989) (per curiam) – the Seventh Circuit imposed sanctions on Miller for advancing a "patently frivolous" position, stating, "[w]e find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, Brushaber v. Union Pacific Railroad Company . . . and those specifically rejecting the argument advanced in The Law That Never Was, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure."

United States v. Stahl, 792 F.2d 1438, 1441 (9th Cir. 1986) – the Ninth Circuit, upholding Stahl's conviction for failure to file returns and for making a false statement, stated that "the Secretary of State's certification under authority of Congress that the sixteenth amendment has been ratified by the requisite number of states and has become part of the Constitution is conclusive upon the courts."

United States v. Foster, 789 F.2d 457 (7th Cir. 1986) – the Seventh Circuit, rejecting Foster's claim that the Sixteenth Amendment was never properly ratified, affirmed his conviction for tax evasion, failing to file a return, and filing a false W-4 statement.

Knoblauch v. Commissioner, 749 F.2d 200, 202 (5th Cir. 1984) – the Fifth Circuit rejected as "totally without merit" the contention that the Sixteenth Amendment was not constitutionally adopted and imposed monetary sanctions against Knoblauch based on the frivolousness of his appeal.

Other Cases:

George v. United States, No. 5:21-CV-01187-EJD, 2022 WL 562758 (N.D. Cal. Feb. 24, 2022); United States v. Moleski, Crim. No. 12–811 (FLW), 2014 WL 197907 (D. N.J. Jan. 13, 2014); Banister v. U .S. Dep't of the Treasury, 110 A.F.T.R.2d (RIA) 2012-6790 (N.D. Cal. 2011); United States v. Benson, 2008 WL 267055 (N.D. Ill. Jan. 10, 2008); United States v. Schulz, 529 F. Supp. 2d 341 (N.D.N.Y. 2007); Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005).

7. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some individuals and groups assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and, thus, U.S. citizens and residents are not subject to federal income tax laws.

The Law: The constitutionality of the Sixteenth Amendment has invariably been upheld when challenged. Numerous courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws are valid as applied. In Notice 2010-33, 2010-17 I.R.B. 609, the IRS warned taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

Young v. Commissioner, 551 F. App'x 229, 203 (8th Cir. 2014) – rejecting as "meritless" and "frivolous" Young's arguments that the income tax is an unconstitutional direct tax, the 8th Circuit imposed $8,000 in sanctions.

Taliaferro v. Freeman, 595 F. App'x 961, 962–63 (11th Cir. 2014) – the Eleventh Circuit rejected as frivolous the taxpayer's argument that the Sixteenth Amendment authorizes the imposition of excise taxes but not income taxes, and ordered sanctions against him up to and including double the government's costs.

In re Becraft, 885 F.2d 547, 548–49 (9th Cir. 1989) – the Ninth Circuit, rejecting the taxpayer's frivolous position that the Sixteenth Amendment does not authorize a direct non-apportioned income tax, affirmed the failure to file conviction.

Lovell v. United States, 755 F.2d 517, 518–20 (7th Cir. 1984) – the

Seventh Circuit rejected the argument that the Constitution prohibits imposition of a direct tax without apportionment, upheld assessment of the frivolous return penalty, and imposed sanctions for pursuing "frivolous arguments in bad faith" on top of the lower court's award of attorneys' fees to the government.

United States v. Jones, 115 A.F.T.R.2d (RIA) 2015-2038 (D. Minn. 2015) – the court rejected as frivolous the taxpayer's arguments that individual income tax is unconstitutional because it is "a direct tax which must be apportioned among the several states," noting that "[i]t is well-established that the Sixteenth Amendment authorizes the imposition of an income tax without apportionment among the states."

Maxwell v. IRS, No. CIV. 3090308, 2009 WL 920533, at *2 (M.D. Tenn. Apr. 1, 2009) – the court characterized the taxpayer's arguments that there is no law that imposes an income tax, nor is there a non-apportioned direct tax that could be imposed on him as a supposed non-citizen as "routinely rejected."

Other Cases:

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980); George v. United States, No. 5:21-CV-01187-EJD, 2022 WL 562758 (N.D. Cal. Feb. 24, 2022); United States v. Troyer, 113 A.F.T.R.2d (RIA) 2014-387 (D. Wyo. 2013); United States v. Hockensmith, 104 A.F.T.R.2d (RIA) 2009-5133 (M.D. Pa. 2009); Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005).

E. Fictional Legal Bases

1. Contention: The Internal Revenue Service is not an agency of the United States.

Some argue that the IRS is not an agency of the United States but rather a private corporation, because it was not created by positive law (i.e., an act of Congress) and that, therefore, the IRS does not have the authority to enforce the Internal Revenue Code.

The Law: Constitutional and statutory authority establishes that the IRS is an agency of the United States. Indeed, the Supreme Court has stated that "the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under § 7801(a) of the 1954 Code for the administration and enforcement of the internal revenue laws." Donaldson v. United States, 400 U.S. 517, 534 (1971).

Pursuant to section 7801, the Secretary of the Treasury has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce such laws. Based upon this legislative grant, the IRS was created. Thus, the IRS is a body established by "positive law" because it was created through a congressionally mandated power. Moreover, section 7803(a) explicitly provides that there shall be a Commissioner of Internal Revenue who shall administer and supervise the execution and application of the internal revenue laws.

The IRS warned taxpayers of the consequences of attempting to pursue a claim on these grounds in Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

United States v. Fern, 696 F.2d 1269, 1273 (11th Cir. 1983) – the Eleventh Circuit declared that "[c]learly, the Internal Revenue Service is a 'department or agency' of the United States."

Nevius v. Tomlinson, 113 A.F.T.R.2d (RIA) 2014-1872 (W.D. Miss. 2014) – the court granted summary judgment in favor of the government, rejecting Nevius's claim that the IRS is a private corporation, rather than a government agency.

United States v. Provost, 109 A.F.T.R.2d (RIA) 2012-1706 (E.D. Cal. 2012) – the court rejected the taxpayer's arguments and stated that the United States is a sovereign, not a corporation, the IRS is a government agency, and that arguments to the contrary are "wholly frivolous."

Salman v. Dep't of Treasury, 899 F. Supp. 471, 472 (D. Nev. 1995) – the court described Salman's contention that the IRS is not a government agency of the United States as "wholly frivolous" and dismissed his claim with prejudice.

Edwards v. Commissioner, T.C. Memo. 2002-169, 84 T.C.M. (CCH) 24 (2002) – the court dismissed the argument that the IRS is not an agency of the United States Department of Treasury as "tax protester gibberish" and stated that "[i]t's bad enough when ignorant and gullible or disingenuous taxpayers utter tax protester gibberish. It's much more disturbing when a member of the bar offers tax protester gibberish as a substitute for legal argument."

2. Contention: Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.

Some individuals and groups claim that taxpayers are not required to file tax returns because of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq. ("PRA"). The PRA was enacted to limit federal agencies" information requests that burden the public. The "public protection" provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget [OMB] Director. 44 U.S.C. § 3512. Advocates of this contention claim that they cannot be penalized for failing to file Form 1040, because the instructions and regulations associated with the Form 1040 do not display any OMB control number

The Law: Courts have uniformly rejected this argument on multiple grounds. Some have simply noted that the PRA applies to the forms themselves, not to the instruction booklets, and because the Form 1040 has a control number, there is no PRA violation. Others have held that Congress created the duty to file returns in section 6012(a), and "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress." United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992). The IRS has warned taxpayers of the consequences of making this frivolous argument. Rev. Rul. 2006-21, 2006-1 C.B. 745; Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

Dodge v. Commissioner, 317 F. App'x 581 (8th Cir. 2009) – the Eighth Circuit treated the taxpayer's argument that the Form 1040 does not comply with the PRA as frivolous.

Lewis v. Commissioner, 523 F.3d 1272 (10th Cir. 2008) – Lewis argued that the Form 1040 was not valid because (1) the IRS never changed the OMB control number, (2) there is no expiration date, and (3) there are no PRA disclosures on the form 1040. The court held that "Lewis's arguments have no merit and cannot be supported by case law."

Wolcott v. Commissioner, 103 A.F.T.R.2d (RIA) 2009-1300 (6th Cir. 2008) – the Sixth Circuit rejected the taxpayer's argument that Form 1040 does not comply with the PRA and imposed sanctions of $4,000 under 12 U.S.C. § 1912 for bringing a frivolous appeal.

United States v. Patridge, 507 F.3d 1092 (7th Cir. 2007) – in upholding the taxpayer's conviction for tax evasion, the Seventh Circuit addressed and rejected the taxpayer's contention that the PRA foreclosed his conviction.

Salberg v. United States, 969 F.2d 379 (7th Cir. 1992) – the Seventh Circuit affirmed the taxpayer's conviction for tax evasion and failing to file a return, rejecting his claims under the PRA.

United States v. Holden, 963 F.2d 1114 (8th Cir. 1992) – the Eighth Circuit affirmed the taxpayer's conviction for failing to file a return and rejected his contention that he should have been acquitted because tax instruction booklets fail to comply with the PRA.

United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991) – the Ninth Circuit affirmed the taxpayer's conviction for failing to file a return, finding that the requirement to provide information is required by law, not by the IRS: "This is a legislative command, not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch."

Lonsdale v. United States, 919 F.2d 1440 (10th Cir. 1990) – the Tenth Circuit held that the PRA does not apply to summonses and collection notices.

United States v. Wunder, 919 F.2d 34 (6th Cir. 1990) – the Sixth Circuit rejected the taxpayer's claim of a PRA violation and affirmed his conviction for failing to file a return.

Perry v. Wright, 111 A.F.T.R.2d (RIA) 1209 (S.D.N.Y. 2013) – the court held that the PRA does not provide a waiver of sovereign immunity in a tax collection case.

Other Cases:

Licha v. United States, 586 F. App'x 350 (9th Cir. 2014); Wheeler v. Commissioner, 528 F.3d 773 (10th Cir. 2008); United States v. Sanders, 110 A.F.T.R.2d (RIA) 2012-5910 (S.D. Ill. 2011); Shakir v. Commissioner, T.C. Memo. 2015-147, 110 T.C.M. (CCH) 137 (2015); Burt v. Commissioner, T.C. Memo. 2013-140, 105 T.C.M. (CCH) 1827 (2013); Saxon v. United States, T.C. Memo. 2006-52, 91 T.C.M. (CCH) 914 (2006).

One variation of this theory is that taxpayers are not required to comply with requests at a Collection Due Process (CDP) hearing to fill out and submit Form 443-A Collection Information Statement for Wage Earners and Self–

Employed Individuals because the Form 443-A does not display an OMB control number as required by the Paperwork Reduction Act (PRA).

The Law: Pitts v. Commissioner, T.C. Memo 2010-101, 9 T.C.M. (CCH) 1406 (2010). The Court held that 44 U.S.C. section 3518(c)(1)(B)(ii) excludes administrative hearings—such as CDP hearings that evaluate the propriety of a specific collection action against a specific taxpayer—from the reach of the PRA. The lack of a control number on Form 433–A did not relieve Mr. Pitts from the obligation to submit the form and does not relieve him of the consequences of his failure to do so.

3. Contention: African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment.

Proponents of this contention assert that African Americans can claim a so-called "Black Tax Credit" on their federal income tax returns as reparations for slavery and other oppressive treatment suffered by African Americans. A similar frivolous argument has been made that Native Americans are entitled to a credit on their federal income tax returns as a form of reparations for past oppressive treatment.

The Law: No provision in the Internal Revenue Code allows taxpayers to claim a "Black Tax Credit" or a credit for Native American reparations. It is a well settled principle of law that deductions and credits are a matter of legislative grace. See INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934). Unless specifically provided for in the Internal Revenue Code, no deduction or credit is allowed. The IRS has warned taxpayers of the consequences of claiming refunds or other tax benefits based on frivolous reparations tax credits. Rev. Rul. 2004-33, 2004-1 C.B. 628, Notice 2010-33, 2010-17 I.R.B. 609. And in Rev. Rul. 2006-20, 2006-1 C.B. 746, and Notice 2010-33, 2010-17 I.R.B. 609, the IRS warned taxpayers about the frivolous nature of claiming an exemption for Native Americans from federal income tax liability based upon an unspecified "Native American Treaty".

Persons who claim refunds based on the slavery reparation tax credit or assist others in doing so are subject to prosecution for violation of federal tax laws. Furthermore, the United States has a cause of action for injunctive relief against a party suspected of violating the tax laws. Sections 7407 and 7408 provide for injunctive relief against income tax preparers and promoters of abusive tax shelters, respectively, in these types of cases.

Relevant Case Law:

United States v. Bridges, 217 F.3d 841 (4th Cir. 2000) – the Fourth Circuit upheld the taxpayer's conviction of aiding and assisting the preparation of false tax returns, on which he claimed a non-existent "Black Tax Credit."

United States v. Foster, 89 A.F.T.R.2d (RIA) 2002-1063 (E.D. Va. 2002) – permanently enjoining Mr. Foster from preparing or assisting in the preparation of claiming refunds based on fabricated tax credits for slavery reparations or other comparable frivolous grounds.

George v. Commissioner, T.C. Memo. 2006-121, Tax Ct. Rep. (CCH) 56, 539 (2006) – the court rejected the taxpayer's frivolous argument that he is an "Indian not paying taxes," finding that, unless there is an exemption created by treaty or statute, Native Americans are subject to the same federal income tax laws as are other United States citizens.

Taylor v. United States, 57 Fed. Cl. 264, 266 (2003) – the court upheld the IRS's denial of the taxpayer's refund claim, which was based on "being reduced to a second class citizen, but billed first class citizenship taxes for over 60 years," and held that the Internal Revenue Code does not contain a provision allowing slavery reparation claims.

Wilkins v. Commissioner, 120 T.C. 109 (2003) – the court found that the Internal Revenue Code does not provide a tax deduction, credit, or other allowance for slavery reparations.

Other Cases:

United States v. Haugabook, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. Dec. 9, 2002); United States v. Mims, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. Oct. 3, 2002); United States v. Foster, 2002 U.S. Dist. LEXIS 3092 (E.D. Va. Jan. 16, 2002); Hawkbey v. Commissioner, T.C. Memo. 2017-199, 114 T.C.M. (CCH) 417 (2017); Gunton v. Commissioner, T.C. Memo. 2006-122, 91 T.C.M. (CCH) 1261 (2006); Metallic v. Commissioner, T.C.M. (RIA) 2006-123 (T.C. 2006), aff'd, 225 F. App'x 1 (1st Cir. 2007).

4. Contention: Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime.

Proponents of this contention encourage individuals to file claims for refund of the Social Security taxes paid during their lifetime on the basis that the claimants have sought to waive all rights to their Social Security benefits. Or they encourage taxpayers to claim a charitable contribution deduction for their

"gift" of these benefits or of the Social Security taxes to the United States.

The Law: No provision in the Internal Revenue Code, or any other provision of law, allows for a refund of Social Security taxes paid on the grounds asserted above. Nor may a person claim a charitable contribution deduction based upon the purported waiver of future Social Security benefits. Crouch v. Commissioner, T.C. Memo. 1990-309, 59 T.C.M. (CCH) 938 (1990).

The IRS has discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to pursue a claim on these grounds. Rev. Rul. 2005-17, 2005-1 C.B. 823; Notice 2010-33, 2010-17 I.R.B. 609.

5. Contention: An "untaxing" package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes.

Advocates of this idea believe that an "untaxing" package or trust provides a way of legally and permanently "untaxing" oneself so that a person is no longer required to file federal income tax returns and pay federal income taxes. Promoters who sell such tax-evasion plans and supposedly teach individuals how to remove themselves from the federal tax system rely on many of the above-described frivolous arguments, such as the claim that payment of federal income taxes is voluntary, that there is no requirement for a person to file federal income tax returns, and that there are legal ways not to pay federal income taxes.

The Law: The underlying claims for these "untaxing" packages are frivolous, as specified above. Furthermore, in Rev. Rul. 2006-19, 2006-1 C.B. 749, the IRS warned that taxpayers may not eliminate their federal income tax liability by attributing income to a trust and claiming expense deductions related to that trust.

Promoters of these "untaxing" schemes as well as willful taxpayers have been subjected to criminal penalties for their actions. Taxpayers who have purchased and followed these "untaxing" plans have also been subjected to civil penalties for failure to timely file a federal income tax return and failure to pay federal income taxes. Those who promote, advise on, or assist with these schemes can be enjoined from further carrying out this conduct or may be denied the ability to practice before the IRS.

Relevant Case Law:

United Sates v. Meredith, 685 F.3d 814 (9th Cir. 2012) – Lynne Meredith owned and operated several businesses, including We The People and Liberty International, that sold books and conducted seminars instructing people on how to avoid paying income taxes. At the heart of Meredith's operations was a bogus financial instrument she called a "pure trust," which she claimed was exempt from taxes. The Ninth Circuit affirmed Meredith's sentence of 121 months in prison for her role in promoting this fraud.

United States v. Bell, 414 F.3d 474, 479 (3d Cir. 2005) – the Third Circuit affirmed a permanent injunction against Bell, who sold customers access to materials instructing them on how to use a phony "U.S. Sources rationale" to file income tax returns reporting zero income.

United States v. Andra, 218 F.3d 1106, 1107 (9th Cir. 2000) – the Ninth Circuit affirmed the conviction of a promoter of an "untaxing" scheme for tax evasion and conspiracy, and found it proper, when calculating the effect of his actions for sentencing, to include the tax liabilities of those he recruited into this taxfraud conspiracy.

United States v. Clark, 139 F.3d 485 (5th Cir. 1998) – the Fifth Circuit upheld convictions of defendants involved with The Pilot Connection Society for conspiracy to defraud the United States and aiding and abetting the filing of fraudulent Forms W-4.

United States v. Scott, 37 F.3d 1564 (10th Cir. 1994) – the Tenth Circuit affirmed the conviction of eight promoters of a multi-tiered trust package marketed to purchasers as a device to eliminate tax liability without losing control over their assets or income.

United States v. Meek, 998 F.2d 776, 778 (10th Cir. 1993) – the Tenth Circuit upheld Meek's conviction of willfully failing to file an income tax return and willfully attempting to evade taxes because his "trust" had been formed through his membership in an organization (a "warehouse bank") that provided its members the opportunity to warehouse their funds until directed to disburse them.

United States v. Kaun, 827 F.2d 1144 (7th Cir. 1987) – the Seventh Circuit affirmed the district court's injunction prohibiting the taxpayer from inciting others to submit tax returns based on false income tax theories.

United States v. Krall, 835 F.2d 711, 714 (8th Cir. 1987) – the Eighth Circuit affirmed Krall's conviction of willfully filing false income tax returns, stating, "[I]t is clear the alleged trusts were shams; Krall exercised the same dominion and

control over the corpus and income of the trusts as he had before the trusts were executed."

Lizalek v. United States, T.C. Memo. 2009-122, 97 T.C.M. (CCH) 1639 (2009) – the taxpayer claimed a trust was created when the Social Security Administration issued a Social Security card to him and that the IRS accepted that the trust existed when it assigned an EIN to it upon the taxpayer's submission of a Form SS-4, Application for Employer Identification Number. The court found the trust did not exist, that the income assigned to the trust was includable in the taxpayer' gross income, that he was liable for penalties for failure to file returns and to pay tax as well as a civil penalty under section 6682.

Other Cases:
United States v. Welch, 112 A.F.T.R.2d (RIA) 5783 (D. Colo. 2013); United States v. Binge, 94 A.F.T.R. 2d (RIA) 2004-6502 (N.D. Ohio 2004); King v. Commissioner, T.C. Memo. 1995-524, 70 T.C.M. (CCH) 1152 (1995); Robinson v. Commissioner, T.C. Memo. 1995-102, 69 T.C.M. (CCH) 2061 (1995).

6. Contention: A "corporation sole" can be established and used for the purpose of avoiding federal income taxes

Advocates of this idea believe they can reduce their federal tax liability by taking the position that the taxpayer's income belongs to a "corporation sole" (these have also been referred to as "ministerial trusts"), an entity created for the purpose of avoiding taxes. A valid corporation sole is a corporate form that enables religious leaders to hold property and conduct business for the religious entity. Participants in this scheme apply for incorporation under the pretext of being an official of a church or other religious organization. Participants contend that their income is exempt from taxation because the income belongs to the corporation sole, which is a tax-exempt organization described in section 501(c)(3).

The Law: A valid corporation sole enables a bona fide religious leader, such as a bishop or other authorized religious official, to incorporate under state law, in his capacity as a religious official. See, e.g., Berry v. Society of Saint Pius X, 69 Cal. App. 4th 354 (1999). A corporation sole may own property and enter into contracts as a natural person, but only for the purposes of the religious entity and not for the individual office holder's personal benefit. A legitimate corporation sole is designed to ensure continuity of ownership of property dedicated to the benefit of a legitimate religious organization.

A taxpayer cannot avoid income tax or other financial responsibilities by purporting to be a religious leader and forming a corporation sole for tax-avoidance purposes. The claims that such a corporation sole is described in section 501(c)(3) and that assignment of income and transfer of assets to such an entity will exempt an individual from income tax are meritless. Courts have repeatedly rejected similar arguments as frivolous, imposed penalties for making such arguments, and upheld criminal tax evasion convictions against those making or promoting the use of such arguments.

The IRS discussed this frivolous argument in more detail and warned taxpayers of the consequences of attempting to use this scheme Rev. Rul. 2004-27, 2004-1 C.B. 625 and in Notice 2010-33, 2010-17 I.R.B. 609.

Relevant Case Law:

United States v. Heinemann, 801 F.2d 86 (2d Cir. 1986) – the Second Circuit upheld the conviction and three-year prison sentence imposed against the defendants for promoting use of purported church entities to avoid taxes.

United States v. Adu, 770 F.2d 1511 (9th Cir. 1985) – the Ninth Circuit upheld the defendant's conviction for aiding and assisting in the preparation and presentation of false income tax returns with respect to false charitable deductions to purported church entities.

United States v. Berryman, 112 A.F.T.R.2d (RIA) 2013-6282 (D. Colo. 2013) – the court rejected the taxpayer's attempt to use a corporation sole to avoid taxation and noted that "[c]ourts have repeatedly rejected similar arguments as frivolous, imposed penalties for making such arguments, and upheld criminal tax evasion convictions against those making or promoting the use of such arguments."

United States v. Gardner, 101 A.F.T.R.2d (RIA) 2008-2016 (D. Ariz. 2008) aff'd, 457 Fed. Appx. 611 (9th Cir. 2011) – the district court permanently enjoined the Gardners from promoting a tax fraud scheme involving a "corporation sole" program that they had sold to over 300 people. The Ninth Circuit affirmed.

Svedahl v. Commissioner, 89 T.C. 245 (1987) – the court sanctioned the taxpayer under section 6673 in the amount of $5,000 for using contributions to purported church entities to shield income and pay personal expenses.

Other Cases:

United States v. Gardner, T.C. Memo. 2013-67, 105 T.C.M. (CCH) 1433 (2013).

7. Contention: Taxpayers who did not purchase and use fuel for an off-highway business can claim the fuels-tax credit.

Proponents of this idea assert that taxpayers can claim the section 6421 fuels-tax credit without regard to whether they qualify for the credit through the purchase and use of gasoline for an off-highway business. In addition, certain purveyors of fraudulent tax schemes have claimed on behalf of clients (usually on IRS Form 4136, Credit for Federal Tax Paid on Fuels) the tax credit under section 6427 for nontaxable uses of fuel when the taxpayers clearly are not entitled to the credit based on the facts, such as the taxpayer's occupation and income level, type of motor vehicle and how it is used, and the volume of fuel claimed.

The Law: These claims are frivolous. Section 6421(a) allows a tax credit for gasoline purchased and used in an off-highway business. Similarly, section 6427 provides a tax credit to certain purchasers of undyed diesel fuel used in an off-highway business. The diesel fuel credit is allowable both for off-highway business use or any use other than in a registered diesel-powered highway vehicle (e.g., in a private home for personal heating purposes). The circumstances in which the credits are available are specific and limited.

The principal requirement is that the fuel be used in an off-highway business. Off-highway business use is the use of fuel in a trade or business or in an income-producing activity other than as a fuel in a vehicle registered for use on public highways. IRS Publication 225 (2008), Farmer's Tax Guide, gives as examples of the off-highway business use of fuels: (1) use in stationary machines like generators, compressors, power saws, and similar equipment; (2) use in forklifts, bulldozers, and earthmovers; and (3) use in cleaning. Also, Publication 510 (2008), Excise Taxes, explains that, with some exceptions, a highway vehicle is one "designed to carry a load over a public highway," including federal, state, county, and city roads and streets. Passenger cars, motorcycles, buses, highway trucks, tractor trailers, etc., generally are highway vehicles. Taxpayers are claiming fuels tax credits without regard to these requirements and often in absurdly large amounts that cannot possibly be for the quantity of fuel expended for off-highway purposes. Notice 2010-33, 2010-17 I.R.B. 609, lists such positions as frivolous.

Relevant Case Law:

United States v. Harden, No. 618CV2148ORL41DCI, 2020 WL 7407588, at *1 (M.D. Fla. Jan. 3, 2020) – the court entered an order and judgment of permanent injunction and disgorgement where defendant prepared and filed federal income tax returns for customers improperly claiming false or fraudulent fuel tax credits.

United States v. Totou, No. 3:07-cv-391, 2008 BL 102279 (W.D.N.C May 14, 2008) – the court permanently enjoined a tax return preparer from preparing or filing federal tax returns. Totou claimed fraudulent fuels tax credits on customers' returns.

8. Contention: A Form 1099-OID can be used as a debt payment option, or the form or a purported financial instrument may be used to obtain money from the Treasury.

Advocates of this contention encourage individuals to use a Form 1099-OID, Original Issue Discount, or a bogus financial instrument such as a bonded promissory note as what purports to be a debt payment method for credit cards or mortgage debt. In an OID scheme, filers falsely list large amounts of OID income and corresponding large amounts of withholding. Instead of listing actual OID income, the filers list debt, including credit card debts and mortgages. The filers also falsely represent that a large amount of their OID income was withheld, and they thus claim that they are entitled to large tax refunds. This scheme has evolved somewhat from an earlier frivolous position under which a secret bank account (sometimes referred to as a "straw man" account) was supposedly created at the Treasury Department for each U.S. citizen that individuals could use to pay tax and non-tax debts and claim withholding credits. Those who put forth this theory often argue that the proper way to redeem or draw on the account is to use some form of made-up financial instrument. This has frequently involved what looks like a check drawn on the United States Treasury or other similar paper instruments, e.g., bonded promissory notes.

One variation of this theory claims that each citizen has a "private side" and a "public side." This theory contends that the government owns each person's public side or "straw man" by holding title to each citizen's birth certificate. By filing UCC–1 financing statements and their birth certificates in a state that accepts such filings, followers of this theory believe they can "redeem" their birth certificates. Redemption theorists view the redeemed birth certificate as an asset on which they place a value of up to $2 million and assert the U.S. Treasury Department acts as a clearinghouse for the funds. Under this theory, they then create money orders and sight drafts drawn on their "Treasury Direct

Accounts." Courts have characterized this theory as "implausible," "clearly nonsense," "convoluted," and "peculiar."

Another variation of the "redemption theory" asserts that persons can draw on the secret or "straw man" Treasury account by sending a Form 1099-OID to a creditor and the creditor can present the form to the Treasury Department and receive full payment of the debt. The proponents of this theory appear to assert that the Form 1099-OID permits them to access their secret Treasury Account for an amount equal to the face amount of the Form 1099-OID in the form of a tax refund.

Proponents of this theory also argue that they have sold or transferred their debt or obligation to the person to whom they issued the Form 1099-OID in a transaction subject to sections 1271 through 1275 and that the debt or obligation is transferred with a discount of the full face amount. The issuer of the Form 1099-OID then treats the face amount of the Form 1099-OID as "other income" on the individual's return. The "other income" amount, however, is not included in the taxable income line.

Persons asserting this theory often significantly overstate withholding and claim an excessive refund in an amount close or identical to the inflated withholding.

The Law: Original Issue Discount (OID) is a type of interest that is not payable as it accrues. OID is normally created when a debt, usually a bond, is issued at a discount. In effect, selling a bond at a discount converts stated principal into a return on investment, or interest. OID is simply the excess of the stated redemption of the deposit, bond, or other financial obligation at maturity over its issue price. Original Issue Discount forms are tax forms designed to report an individual's interest income derived from these investments. As the instructions to the Form 1099-OID indicate, the form's purpose is to report the original issue discount of holders of OID obligations, like certificates of deposit, time deposits, bonds, debentures, bonus saving plans, and Treasury inflation-indexed securities, having a term of more than one year. Under section 1272, OID is taxable as interest over the life of the obligation and must be included in the holder's gross income each taxable year that the obligation is held. Certain obligations are excepted, including United States savings bonds and short-term (less than one year) and tax-exempt obligations.

The Form 1099-OID is in no way a financial instrument. It is not a legitimate method of payment of any public or private debt, and it is not a means to withdraw or redeem money from the Treasury. Furthermore, as the Sixth Circuit stated in United States v. Anderson, 353 F.3d 490, 500 (6th Cir. 2003), the

Treasury Department does not maintain depository accounts against which an individual can draw a check, draft, or any other financial instrument. The notion of secret accounts assigned to each citizen is pure fantasy.

In addition to potential civil and criminal tax penalties for misusing Form 1099OID, persons who fraudulently use false or fictitious instruments may be guilty of federal criminal offenses, such as under sections 287 and 514(a) of title 18.

The IRS warned taxpayers of the consequences of making such frivolous arguments in Rev. Rul. 2005-21, 2005-1 C.B. 822 (discussing the "straw man" theory) and Rev. Rul. 2004-31, 2004-1 C.B. 617 (discussing the commercial redemption theory).

Variations of this frivolous theory contend that individuals or groups may claim false withholding or tax payments on an income tax return or purported return using another document from the Form 1099 series of information returns or a Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains. When the Form 2439 is used, it is prepared showing false amounts of tax payments allegedly made for the taxpayer by a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT).

Relevant Case Law:

United States v. Johnson, 795 F.3d 840 (8th Cir. 2015) – the Eighth Circuit upheld the defendants' criminal convictions relating to their misuse of the Form 1099-OID to inflate income and claim refunds.

United States v. Heath, 525 F.3d 451 (6th Cir. 2008) – the Sixth Circuit affirmed the defendant's conviction for presenting a fictitious financial instrument under 18 U.S.C. § 514(a) for sending to the IRS a so-called "Registered Bill of Exchange" that appeared to be a certified check but for which there was no actual account.

United States v. Getzschman, 81 F. App'x. 619 (8th Cir. 2003) – the Eighth Circuit upheld the Getzschmans' convictions for conspiracy to make and pass false or fictitious financial instruments in violation of 18 U.S.C. §§ 371 and 514(a)(1) and for producing, passing, and attempting to pass fictitious money orders in violation of 18 U.S.C. §§ 514(a)(1) and (2) relating to their attempts to use money orders drawn on the Department of Treasury.

United States v. Provost, 109 A.F.T.R.2d (RIA) 2012-1706 (E.D. Cal. 2012) – the court rejected the taxpayer's issuance of "Unlimited Indemnity Bond" as

frivolous and characterized his attempts to draw on the government to pay his debts "nonsensical and meritless."

United States v. Cunningham, 107 A.F.T.R.2d (RIA) 2011-382 (S.D. Cal. 2011) – the court held the taxpayer in contempt for refusing to comply with a court order to provide documents and testimony summoned by the IRS pursuant to an investigation regarding his participation in a Form 1099-OID scheme.

Ernle v. Commissioner, T.C. Memo. 2010-237, 100 T.C.M. (CCH) 367 (2010) – the court held petitioner liable for fraud based on various filings, including phony Forms 1099-OID and imposed a penalty of $4,000 under section 6673(a).

Other Cases:

United States v. Knupp, No. 1:09–CV–2724, 2010 WL 2245551 (N.D. Ga. May 14, 2010); United States v. Miller, No. 3:09–1030, 2009 WL 4060274, (M.D. Tenn. Nov. 23, 2009); United States v. Guan, No. 2:09–cv–07816, 104 A.F.T.R. 2d (RIA) 2009-7471 (C.D. Cal. 2009); Bryant v. Washington Mut. Bank, 524 F. Supp. 2d 753, 760 (W.D. Va. 2007) aff'd, 282 F. App'x 260 (4th Cir. 2008); Osband v. Commissioner, T.C. Memo. 2013-188, 106 T.C.M. (CCH) 124 (2013).

II. FRIVOLOUS ARGUMENTS IN COLLECTION DUE PROCESS CASES

Under sections 6320 (pertaining to liens) and 6330 (pertaining to levies), the IRS must provide taxpayers notice and an opportunity for an administrative appeals hearing upon the filing of a notice of federal tax lien (section 6320) and before or after levy (section 6330). Taxpayers have the right to seek judicial review of the IRS's determination in these proceedings. I.R.C. § 6330(d). These reviews can extend to the merits of the underlying tax liability if the taxpayer has not previously received the opportunity for review of the merits, e.g., did not receive a notice of deficiency. I.R.C. § 6330(c)(2)(B). A face-to-face administrative hearing concerning a taxpayer's underlying liability will not be granted if the hearing request raises solely frivolous arguments. Treas. Reg. §§ 301.6320-1(d)(2) Q&A D8 and 301.6330-1(d)(2) Q&A D8. The Tax Court will impose sanctions pursuant to section 6673 against taxpayers who seek judicial relief based upon frivolous or groundless positions.

Under section 6330(g), the IRS may disregard any portion of a section 6320 or 6330 hearing request that is based upon a position identified as frivolous by the

IRS in a published list or that reflects a desire to delay or impede tax administration. Such portion shall not be subject to any further administrative or judicial review. If the entire hearing request meets one or both of these criteria, the hearing request will be denied. Also, section 6702(b) allows imposition of a $5,000 penalty for specified frivolous submissions, including frivolous section 6320 or 6330 hearing requests, where any portion of the submission meets one or both of these criteria. See section III below. The most recent published list of frivolous positions is Notice 2010-33, 2010-1 C.B. 609. Accordingly, when the Tax Relief Health Care Act of 2006 (TRHCA) amendments are applicable, a taxpayer raising only frivolous issues may not only be ineligible for a face-to-face hearing but may also be denied any section 6320 or 6330 hearing and may be subject to a penalty.

This section discusses some of the common frivolous tax arguments raised in collection due process cases.

A. Invalidity of the Assessment

1. Contention: A tax assessment is invalid because the taxpayer did not get a copy of the Form 23C; the Form 23C was not personally signed by the Secretary of the Treasury; or a form other than Form 23C is not a valid record of assessment.

The Law: Tax assessments are formally recorded on a record of assessment. I.R.C. § 6203. The assessment is made by an assessment officer signing the summary record of assessment. Treas. Reg. § 301.6203-1. The summary record of assessment must "provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." Id. The date of the assessment is the date the summary record is signed. Id. There is no requirement in the statute or regulation that the assessment be recorded on a specific form, that the Secretary of the Treasury personally sign it, or that the taxpayer be provided with a copy of the record of assessment before the IRS takes collection action.

The IRS has refuted the frivolous argument that before the IRS may collect overdue taxes, the IRS must provide taxpayers with a summary record of assessment made on a Form 23-C, Assessment Certificate – Summary Record of Assessments, or on another particular form in Rev. Rul. 2007-21, 2007-1 C.B. 865.

Relevant Case Law:

Best v. Commissioner, 702 F. App'x 615 (9th Cir. 2017) – the court held that Forms 4340 provided sufficient record of assessment for purposes of the taxpayer's request and that the Appeals Officer was not obligated to provide Taxpayers with a specific, signed delegation order for the Forms 4340.

March v. IRS, 335 F.3d 1186 (10th Cir. 2003) – the Tenth Circuit held that the computer-generated certificate of assessment and payment form (RACS Report 006) used by the IRS to record assessments against the taxpayers satisfied the regulatory requirements as it is equivalent to the non-computer-generated form (Form 23C) previously used by the IRS. Furthermore, production of a Form 4340 creates a presumption that a Summary Record of Assessment, whether on Form 23C or RACS Report 006, was validly executed and certified.

Best v. Commissioner, T.C. Memo. 2014-72, 107 T.C.M. (CCH) 1376 (2014)— the court held that the Forms 4340 provided sufficient record of assessment for purposes of the taxpayer's request, the Appeals Officer was not obligated to furnish a Revenue Accounting Control System (RACS) report or signed Form 23C, and imposed a $5,000 section 6673 penalty.

Powell v. Commissioner, T.C. Memo. 2009-174, 98 T.C.M. (CCH) 56 (2009) – the court awarded a $25,000 section 6673 penalty against the taxpayer for asserting, among other frivolous arguments, that the IRS was obligated to produce a Form 23C.

Williams v. Commissioner, T.C. Memo. 2005-94, 89 T.C.M. (CCH) 114 (2005) – in this collection due process case, the court held that it was not an abuse of discretion for the Appeals Officer to provide copies of the transcripts of account (so-called MFTRA-X transcripts) to the taxpayer in lieu of the copies of the assessment documents that he had requested.

Nestor v. Commissioner, 118 T.C. 162 (2002) – the court held that the taxpayer was not entitled to production of Form 23C at his collection due process hearing and it was not an abuse of discretion for the Appeals Officer to use Form 4340, Certificate of Assessments and Payments to verify the assessment, for purposes of section 6330(c)(1).

Other Cases:

May v. Commissioner, T.C. Memo. 2014-194, 108 T.C.M. (CCH) 324 (2014); Chang v. Commissioner, T.C. Memo. 2007-100, 93 T.C.M. (CCH) 1143 (2007); Perez v. Commissioner, T.C. Memo. 2002-274, 84 T.C.M. (CCH) 501 (2002).

2. Contention: A tax assessment is invalid because the assessment was made from a substitute for return prepared pursuant to section 6020(b), which is not a valid return.

The Law: Section 6020(b)(1) provides that "[i]f any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." Section 6020(b)(2) further provides that any return prepared pursuant to section 6020(b)(1) shall be prima facie good and sufficient for all legal purposes. See also Treas. Reg. § 301.6020-1.

Relevant Case Law:

Douglas v. United States, 324 F. App'x 320 (5th Cir. 2009) – the Fifth Circuit rejected the taxpayer's claim that "the IRS committed 'fraud'" by completing a section 6020(b) return and held that the IRS properly issued notices of levy.

Wnuck v. Commissioner, 136 T.C. 498 (2011) – the court rejected the taxpayer's claim that the IRS lacked authority to prepare a section 6020(b) return for income taxes and imposed a $5,000 penalty under section 6673.

Nicklaus v. Commissioner, T.C. Memo. 2005-156, 89 T.C.M. (CCH) 1499 (2005) – the court held that the IRS may prepare substitute returns under section 6020(b) for taxpayers who fail to do so themselves.

Other Cases:

United States v. Updegrave, 1997 WL 297074 (E.D. Pa. May 28, 1997); Holland v. Louisiana Sec'y of Revenue & Taxation, 97-1 U.S.T.C. ¶ 50,403 (W.D. La. Feb. 7, 1997); Shakir v. Commissioner, T.C. Memo. 2015-147, 110 T.C.M. (CCH) 137 (2015); Reynolds v. Commissioner, T.C. Memo. 2009-181, 98 T.C.M. (CCH) 83 (2009).

B. Invalidity of the Statutory Notice of Deficiency

1. Contention: A statutory notice of deficiency is invalid because it was not signed by the Secretary of the Treasury or by someone with delegated authority.

The Law: There is no statutory requirement that, to be valid, a notice of deficiency must be signed by the Secretary of the Treasury or his delegate. The Secretary is authorized to send notices of deficiency to taxpayers. I.R.C. § 6212(a). "Secretary" includes the Secretary of the Treasury or his delegate. I.R.C. § 7701(a)(11)(B). "Delegate," as used with respect to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. I.R.C. § 7701(a)(12)(A)(i). Thus, the authority to sign notices of deficiency may be delegated to any IRS officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority.

Relevant Case Law:

Selgas v. Commissioner, 475 F.3d 697 (5th Cir. 2007) – on appeal, the taxpayer argued that the Tax Court lacked jurisdiction because the notice of deficiency sent to him was invalid because the employee who signed it lacked authority to do so. The Fifth Circuit held that a signature is not required on a notice of deficiency to render the notice of deficiency valid, stating, "Like our sister circuits, we conclude that a notice of deficiency is valid as long as it informs a taxpayer that the IRS has determined that a deficiency exists and specifies the amount of the deficiency . . . [and] [t]he existence of a signature or the identity of any IRS official who provides one, is superfluous."

Urban v. Commissioner, 964 F.2d 888 (9th Cir. 1992) – the Ninth Circuit held that the Internal Revenue Code does not require a notice of deficiency to be signed.

Tavano v. Commissioner, T.C. Memo. 1991-237, 61 T.C.M. (CCH) 2743 – the court rejected taxpayer's argument that the notice of deficiency was invalid because it was unsigned.

Other Cases:

Marcinek v. Commissioner, 467 F. App'x 153 (3rd Cir. 2012); United States v. Reading, 2012 WL 4120439 (D. Ariz. 2012); Muncy v. Commissioner, T.C. Memo. 2017-83, 113 T.C.M. (CCH) 1399 (2017); Reynolds v. Commissioner, T.C. Memo. 2006-192, 92 T.C.M. (CCH) 260 (2006); Ball v. Commissioner, T.C. Memo. 2006-141, 92 T.C.M. (CCH) 7 (2006); Wheeler v. Commissioner, T.C. Memo. 2006-109, 91 T.C.M. (CCH) 1194 (2006); Nestor v. Commissioner, 118 T.C. 162 (2002).

2. Contention: A statutory notice of deficiency is invalid because the taxpayer did not file an income tax return.

The Law: Section 6211(a) defines "deficiency" as the amount by which the tax imposed by subtitle A (income taxes) or B (estate and gift taxes) or chapter 41, 42, 43, 44 (excise taxes) exceeds the excess of the sum of the amount shown as the tax by the taxpayer upon his return (if a return was made and amount was shown thereon) plus amounts previously assessed (or collected without assessment) as a deficiency, over the amount of rebates, as defined in section 6211(b)(2). In accordance with this definition, a taxpayer's failure to report tax on a return does not prevent the IRS from determining a deficiency in his federal tax and issuing a notice of deficiency under section 6212(a).

Relevant Case Law:

Brennan v. Commissioner, T.C. Memo. 2009-77, 97 T.C.M. (CCH) 1379 (2009) – the court upheld the deficiencies determined by the IRS; taxpayer made only frivolous arguments, including that the "[IRS] lacked the authority to issue a notice of deficiency and that no statute required him to pay income tax."

Johnston v. Commissioner, T.C. Memo. 2004-107, 87 T.C.M. (CCH) 1256 (2004) – the court stated that taxpayers' "contention that the Commissioner cannot determine a deficiency for a year for which a taxpayer did not file a return is frivolous." The court further emphasized that their contention that failing to file a return shields a nonfiler from income tax liability is also frivolous and, due to the frivolous arguments, imposed a penalty under section 6673.

Robinson v. Commissioner, T.C. Memo. 2002-316, 84 T.C.M. (CCH) 694 (2002) – the court found the taxpayer liable for the section 6673(a) penalty: taxpayer argued, among other frivolous arguments, that the IRS was not authorized to determine a deficiency for a taxpayer who has not filed a return.

C. Invalidity of Notice of Federal Tax Lien

1. Contention: A notice of federal tax lien is invalid because it is unsigned or not signed by the Secretary of the Treasury or because IRS employees lack the delegated authority to file a notice of federal tax lien.

The Law: The form and content of the notice of federal tax lien is controlled by federal law. The form and content of the notice of federal tax lien shall be prescribed by the Secretary and shall be valid notwithstanding any other

provision of law regarding the form or content of a notice of lien. I.R.C. § 6323(f)(3). The notice of federal tax lien must be filed on a Form 668, Notice of Federal Tax Lien Under Internal Revenue Laws, and must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose. Treas. Reg. § 301.6323(f)-1(d). There is no statutory or regulatory requirement that a notice of federal tax lien, to be valid, must be signed by anyone or, if it is signed, that it must be signed by the Secretary of the Treasury.

"The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary." I.R.C. § 6323(a). "Secretary" is defined to include the Secretary of the Treasury or his delegate and the term "delegate," as used with respect to the Secretary of the Treasury, is defined to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. I.R.C. §§ 7701(a)(11)(B) and 7701(a)(12)(A)(i). Treasury Order 150-10 delegates to the Commissioner the Secretary's authority to enforce and administer the internal revenue laws. Delegation Order 5-4, Rev. 3 delegates to IRS personnel the Commissioner's authority with respect to notices of federal tax lien.

Relevant Case Law:

Fairchild v. IRS, 450 F. Supp. 2d 654 (M.D. La. 2006) – the court rejected the argument that IRS employees lacked the authority to file notices of federal tax lien.

Uveges v. United States, 2002 U.S. Dist. LEXIS 20636, 2002-2 U.S.T.C. ¶50,740 (D. Nev. 2002) – the court noted that with respect to section 6323, along with other Code sections that use of the term "Secretary," "Secretary" refers to the Secretary of the Treasury and any delegates.

Hult v. Commissioner, T.C. Memo. 2007-302, 94 T.C.M. (CCH) 359 (2007) – the court dismissed taxpayer's argument that the notice of federal tax lien was invalid because it was not signed, as it is not necessary for a notice of federal tax lien to be signed.

Other Cases:

In re Kroll, 74 A.F.T.R. 2d 94-6161 (W.D. Mich. Aug. 11, 1994); Thompson v. Commissioner, T.C. Memo. 2004-204, 88 T.C.M. (CCH) 219 (2004).

2. Contention: The form or content of a notice of federal tax lien is controlled by or subject to a state or local law, and a notice of federal tax lien that does not comply in form or content with a state or local law is invalid.

The Law: The form and content of the notice of federal tax lien is controlled by federal law. The form and content of the notice of federal tax lien shall be prescribed by the Secretary and shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien. I.R.C.§ 6323(f)(3). The notice of federal tax lien must be filed on a Form 668, Notice of Federal Tax Lien Under Internal Revenue Laws, and must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose. Treas. Reg. § 301.6323(f)-1(d).

Relevant Case Law:

United States v. Union Cent. Life Ins. Co., 368 U.S. 291 (1961) – the Supreme Court held that the form used for filing a federal tax lien does not have to comply with an additional state law requirement that it describe the property affected, although the lien did have to be filed in a designated state office.

Tolotti v. Commissioner, T.C. Memo. 2002-86, 83 T.C.M. (CCH) 1436 (2002), aff'd, 70 F. App'x 971 (9th Cir. 2003) – in upholding the validity of a notice of federal tax lien filed even though the lien was not certified pursuant to a Nevada statute, the court noted that it is "well settled" that the form and content of the notice of federal tax lien is controlled by federal, not state, law.

D. Invalidity of Collection Due Process Notice

1. Contention: A collection due process notice (e.g., Letter 1058, LT- 11 or Letter 3172) is invalid because it is not signed by the Secretary or his delegate.

The Law: the Secretary shall notify a taxpayer in writing of the filing of a notice of federal tax lien, pursuant to section 6323, advising the taxpayer of the right to request a collection due process hearing. I.R.C. § 6320(a)(1). No levy may be made on any property or rights to property of any person unless the Secretary has notified such person of his or her right to a collection due process hearing before levy. I.R.C. § 6330(a)(1). There is no requirement for a signature on the collection due process notice in the statute or regulations.

Relevant Case Law:

Oropeza v. Commissioner, T.C. Memo. 2008-94, 95 T.C.M. (CCH) 1367 (2008) – the court reaffirmed that there is "no statutory requirement" that the Final Notice of Intent to Levy and Notice of Your Right to a Hearing be signed.

Craig v. Commissioner, 119 T.C. 252 (2002) – the court held that for purposes of section 6330(a), either the Secretary or his delegate (e.g., the Commissioner) may issue a final notice of intent to levy. In this case, the authority to levy was delegated to the Automated Collection Branch Chiefs pursuant to a delegation order.

Other Cases:

Thompson v. Commissioner, T.C. Memo. 2004-204, 88 T.C.M. (CCH) 219 (2004); Hodgson v. Commissioner, T.C. Memo. 2003-122, 85 T.C.M. (CCH) 1232 (2003).

2. Contention: A collection due process notice is invalid because no certificate of assessment is attached.

The Law: Sections 6320(a)(3) and 6330(a)(3) list the information required to be included with the collection due process notice, such as the amount of unpaid tax, the right of the person to request a collection due process hearing, administrative appeals available, and the provisions of the Internal Revenue Code and procedures pertaining to the notice of federal tax lien or levy. See also Treas. Reg. §§ 301.6320-1(a)(2), Q&A A10 and 301.6330-1(a)(3), Q&A A6. There is no requirement in the statute or regulations that a certificate of assessment be attached to the collection due process notice.

E. Verification Given as Required by I.R.C. § 6330(c)(1)

1. Contention: Verification requires producing certain documents.

The Law: At a collection due process hearing, the appeals officer is required to obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. I.R.C. §§ 6320(c) and 6330(c)(1). Appeals must obtain verification from the IRS office collecting the tax. Treas. Reg. §§ 301.6320-1(e)(1) and 301.6330-1(e)(1). Neither the statutes nor the regulations require the appeals officer to rely upon a particular

document (e.g., the summary record of assessment) to satisfy the verification requirement. Sections 6320(c) and 6330(c)(1) also do not require the Appeals Officer to give the taxpayer a copy of the verification upon which the Appeals Officer relied. See also Treas. Reg. §§ 301.6320-1(e)(1) and 301.63301(e)(1). There is no requirement in the statute or regulations that the taxpayer be provided with any documents as a part of the verification process. As a matter of practice, however, the taxpayer will be provided with a transcript of account such as a Form 4340 or MFTRA-X computer transcript. Transcripts such as the Form 4340 or MFTRA-X, which identify the taxpayer, the character of the liability assessed, the taxable period and the amount of the assessment, are sufficient to show the validity of an assessment, absent a showing of irregularity.

Relevant Case Law:

Standifird v. Commissioner, T.C. Memo. 2002-245, 84 T.C.M. (CCH) 371 (2002) – the court held that a MFTRA-X transcript "is a valid verification that the requirements of any applicable law or administrative procedure have been met."

Schroeder v. Commissioner, T.C. Memo. 2002-190, 84 T.C.M. (CCH) 141 (2002) – the court held that the TXMODA transcript is sufficient for the verification requirement.

Craig v. Commissioner, 119 T.C. 252 (2002) – the court held that section 6330(c)(1) does not require the Appeals Officer to rely upon a particular document, such as the summary record of assessment, to satisfy the verification requirement of section 6330(c)(1) or mandate that the Appeals Officer actually provide the taxpayer with a copy of the verification upon which the Appeals Officer relied.

Other Cases:

May v. Commissioner, T.C. Memo. 2014-194, 108 T.C.M. (CCH) 324 (2014); Best v. Commisioner, T.C. Memo. 2014-72, 107 T.C.M. (CCH) 1376 (2014); Harper v. Commissioner, T.C. Memo. 2013-79, 105 T.C.M. (CCH) 1484 (2013); Nestor v. Commissioner, 118 T.C. 162 (2002); Wagner v. Commissioner, T.C. Memo. 2002-180, 84 T.C.M. (CCH) 96 (2002); Davis v. Commissioner, 115 T.C. 35 (2000).

F. Invalidity of Statutory Notice and Demand

1. Contention: A notice and demand is invalid because it is not signed, it is not on the correct form (such as Form 17), or because no certificate of assessment is attached.

The Law: The Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. I.R.C. § 6303(a). This notice is to be left at the dwelling or usual place of business of such person, or shall be mailed to such person's last known address. See also Treas. Reg. § 301.6303-1(a) (failure to give notice within 60 days does not invalidate notice). Notice and demand is sufficient for purposes of section 6303 as long as it states the amount due and makes demand for payment. There is no requirement in the statute or regulation that the notice and demand be made on a specific form, have a signature, or include any specific attachments.

At a collection due process hearing, an Appeals Officer may rely upon a computer transcript to verify that notice and demand for payment has been sent to a taxpayer in accordance with section 6303. For example, the entry in a Form 4340 showing "notice of balance due" can establish proper issuance of a section 6303 notice and demand.

Relevant Case Law:

Williams v. Commissioner, T.C. Memo. 2008-173, 96 T.C.M. (CCH) 25 (2008) – the court rejected taxpayer's argument that he is entitled to see proof that the Notice and Demand Letter was received, holding that Forms 4340 sufficiently showed that the IRS issued notices of balance due (which constitute notice and demand for payment under section 6303(a)) on the same day that the IRS assessed petitioner's tax.

Flathers v. Commissioner, T.C. Memo. 2003-60, 85 T.C.M. (CCH) 969 (2003) – the court rejected as frivolous and/or groundless taxpayer's argument that she did not receive proper notice and demand under section 6303(a) because, according to her, the IRS must use Form 17 in issuing such notice and demand.

Craig v. Commissioner, 119 T.C. 252, 262-63 (2002) – the court held that notices the taxpayer received, such as notices of intent to levy and notices of deficiency, were sufficient to meet the requirements of section 6303(a), and the form on which notice of assessment and demand for payment is made was irrelevant, as long as it provided her with the information specified in section 6303(a).

Keene v. Commissioner, T.C. Memo. 2002-277, 84 T.C.M. (CCH) 514 (2002) – the court rejected as frivolous and groundless taxpayer's argument that a notice and demand for payment was not in accord with a Treasury decision issued in 1914 that required a Form 17 be used for such purpose.

G. Tax Court Authority

1. Contention: The Tax Court does not have the authority to decide legal issues.

The Law: The United States Tax Court is a federal court of record established by Congress under Article I of the United States Constitution. Congress created the Tax Court to provide a judicial forum in which affected persons could dispute tax deficiencies before paying the disputed amount. The Tax Court's jurisdiction includes the authority to hear tax disputes concerning notices of deficiency, notices of transferee liability, certain types of declaratory judgment, readjustment and adjustment of partnership items, administrative costs, worker classification, relief from joint and several liability on a joint return, and to review collection due process actions and the IRS's failure to abate interest.

Section 7441 provides that "[t]here is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court." Section 7442 provides that "[t]he Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by Chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926." See also I.R.C. §§ 7443-7448.

Relevant Case Law:

Freytag v. Commissioner, 501 U.S. 868 (1991) – the Supreme Court held that section 7443A(b)(4) authorized the Chief Judge of the Tax Court to assign petitioners' cases to a special trial judge and concluded that the special trial judge's appointment did not violate the Appointments Clause of the Constitution.

Kuretski v. Commissioner, 755 F.3d 929 (D.C. Cir. 2014) – the D.C. Circuit rejected the taxpayer's argument that the President's right to remove Tax Court judges under section 7443(f) violated the Constitutional separation of powers, reasoning that the Tax Court is not an Article III court, but part of the Executive branch. The D.C. Circuit noted that the majority holding in Freytag — that the

Tax Court is a "Court of Law" for Appointments Clause purposes — does not call into question the constitutionality of presidential removal power under section 7443(f).

Knighten v. Commissioner, 705 F.2d 777 (5th Cir. 1983) – the Fifth Circuit held as frivolous the contention that, as a court created under Article I of the Constitution, the Tax Court could not hear any cases that could be heard by Article III courts.

Martin v. Commissioner, 358 F.2d 63 (7th Cir. 1966) – the Seventh Circuit ruled that taxpayers' contention that the Tax Court is without a valid constitutional existence lacked substance and merit.

Other Cases:

Blair v. Commissioner, T.C. Memo. 2016-255, 112 T.C.M. (CCH) 577 (2016); Burns, Stix Friedman & Co. v. Commissioner, 57 T.C. 392 (1971).

H. Challenges to the Authority of IRS Employees

1. Contention: Revenue Officers are not authorized to seize property in satisfaction of unpaid taxes.

The Law: "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax." I.R.C. § 6331(a). The term "levy" includes the power of distraint and seizure by any means. I.R.C. § 6331(b). In any case in which the Secretary may levy upon property or property rights, he may also seize and sell such property or property rights. I.R.C. § 6331(b).

Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate," as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. Treasury Order 150-10 delegates to the Commissioner the Secretary's authority to enforce and administer the internal revenue laws. See also Treas. Reg. § 301.6331-1(a)(1) (district director is authorized to levy); see, e.g., Delegation Order 5-3 (formerly D.O. 191 Rev. 3) (redelegation of authority with respect to levies to revenue officers and other IRS employees).

Relevant Case Law:

Gibbs v. Commissioner, 673 F. Supp. 1088, 1092 (N.D. Ala. 1987) – the court held that revenue officers "are specifically delegated and charged with the responsibility for collection of taxes."

Craig v. Commissioner, 119 T.C. 252 (2002) – the court found that the authority to levy on taxpayer's property was delegated to Automated Collection Branch Chiefs pursuant to delegation order.

Other Cases:

O'Brien v. Green, 114 A.F.T.R.2d 2014-5613 (E.D. Va. 2014).

2. Contention: IRS employees lack credentials. For example, they have no pocket commission or the wrong color identification badge.

The Law: The authority of IRS employees is derived from Internal Code provisions, Treasury Regulations, and other redelegations of authority (such as delegation orders). See the previous discussion on the authority of revenue officers to seize property. The authority of IRS employees is not contingent upon such criteria as possession of a pocket commission or a specific type of identification badge.

Relevant Case Law:

Oropeza v. Commissioner, T.C. Memo. 2008-94, 95 T.C.M. (CCH) 1367 (2008) – the court ordered the taxpayer to pay a fine of $10,000 for making only frivolous and groundless arguments, including the argument that he never received the pocket commissions of the IRS agents, which is one of the "patently spurious" issues the taxpayer raised.

Gunselman v. Commissioner, T.C. Memo. 2003-11, 85 T.C.M. (CCH) 756 (2003) – the court held that an Appeals Officer at a collection due process hearing does not have to produce enforcement pocket commission for himself or for the IRS employee who signed the notice of lien filing.

3. Contention: Certain employees in the IRS Office of Appeals are not authorized to conduct collection due process hearings.

The Law: Hearings must be conducted by an officer or employee in the Internal Revenue Service Independent Office of Appeals who has had no prior involvement with respect to the same unpaid tax. I.R.C. §§ 6320(b)(3) and 6330(b)(3). The statute does not specify that any particular category or officer conduct the hearing.

Relevant Case Law:

Tucker v. Commissioner, 135 T.C. 114, 155 (2010), aff'd, 676 F.3d 1129 (2012), cert. denied, 133 S.Ct. 646 (2012) – the Tax Court held that "an 'appeals officer' is any 'officer or employee' in the IRS Office of Appeals to whom is assigned the task of conducting a CDP hearing under section 6330(b)(3)." The D.C. Circuit affirmed the Tax Court's holding that such officers or employees are not inferior officers for purposes of the Appointments clause of the United States Constitution, and so are properly hired by the Commissioner of the Internal Revenue pursuant to section 7804(a).

I. Use of Unauthorized Representatives

1. Contention: Taxpayers are entitled to be represented at hearings, such as collection due process hearings, and in court by persons without valid powers of attorney.

The Law: Section 500 of Title 5 of the United States Code authorizes (subject to some limitations) an attorney in good standing of the bar of the highest court of a State to represent a person before an agency upon filing with the agency a written declaration that they are currently qualified and authorized to represent the person on whose behalf they act. It also authorizes (subject to some limitations) an individual who is duly qualified to practice as a certified public accountant to represent a person before the IRS upon filing a written declaration that they are currently qualified and authorized to represent the particular person on whose behalf they act. Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary, in Circular No. 230 (31 CFR part 10), published regulations that authorize the Office of Professional Responsibility to act on matters related to practitioner conduct and discipline, including disciplinary proceedings and sanctions. The regulations provide that only certain practitioners are entitled to represent taxpayers before the IRS. Attorneys and non-attorneys are entitled to

practice before the United States Tax Court only upon application and admission to practice, pursuant to Tax Court Rule of Practice and Procedure 200.

Relevant Case Law:

Marett v. Commissioner, T.C. Memo. 2009-14, 97 T.C.M. (CCH) 1054 (2009) – the Appeals Officer did not abuse his discretion in refusing to allow a party to represent the taxpayer where there was no proof he was an attorney, CPA or enrolled agent in good standing.

Young v. Commissioner, T.C. Memo. 2003-6, 85 T.C.M. (CCH) 739 (2003) – the court held that a third party was not entitled to represent taxpayer in a collection due process hearing because he was not a practitioner listed in Circular No. 230 (attorney, CPA, etc.).

J. Authorization Under I.R.C. § 7401 is Required in a Collection Due Process Case

1. Contention: The Secretary has not authorized an action for the collection of taxes and penalties or the Attorney General has not directed an action be commenced for the collection of taxes and penalties.

The Law: Section 7401 provides that "[n]o civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

Section 7401 does not apply in collection due process cases. The issue in a collection due process case is whether to sustain a levy or proposed levy or a notice of federal tax lien filing. These are administrative collection actions authorized under I.R.C. §§ 6323 and 6331, not "civil actions" for purposes of section 7401.

Relevant Case Law:

Schwersensky v. Commissioner, T.C. Memo. 2006-178, 92 T.C.M. (CCH) 177 (2006) – the court observed that taxpayer's contention "that the instant collection due process action has not been authorized as required by section 7401 is meritless" for "[s]ection 7401 applies to a 'civil action'" and "[t]he levy (made pursuant to section 6331) is an administrative action that does not necessitate the institution of a civil suit."

III. PENALTIES FOR PURSUING FRIVOLOUS TAX ARGUMENTS

Those who act on frivolous positions risk a variety of civil and criminal penalties. Those who adopt these positions may face harsher consequences than those who merely promote them. "Like moths to a flame, some people find themselves irresistibly drawn to the tax protester movement's illusory claim that there is no legal requirement to pay federal income tax. And, like moths, these people sometimes get burned." United States v. Sloan, 939 F.2d 499, 499–500 (7th Cir. 1991).

Taxpayers who rely on frivolous arguments to avoid filing returns may be subject to an addition to tax under section 6651(a)(1) for failing to file a return. Additionally, taxpayers who rely on frivolous arguments to avoid paying taxes may be subject to additions to tax under sections 6651(a)(2) and 6654 for failing to pay taxes.

Taxpayers filing returns with frivolous positions may be subject to the accuracy-related penalty under section 6662 (twenty percent of the underpayment attributable to negligence or disregard of rules or regulations), the civil fraud penalty under section 6663 (seventy-five percent of the underpayment attributable to fraud) and the erroneous claim for refund penalty under section 6676 (twenty percent of the excessive amount). Additionally, late filed returns setting forth frivolous positions may be subject to an addition to tax under section 6651(f) for fraudulent failure to timely file an income tax return (triple the amount of the standard failure to file addition to tax under section 6651(a)(1)). See Mason v. Commissioner, T.C. Memo. 2004-247, 88 T.C.M. (CCH) 398 (2004) (stating that frivolous arguments "may be indicative of fraud if made in conjunction with affirmative acts designed to evade paying federal income tax").

The Tax Relief Health Care Act of 2006 amended section 6702 to allow imposition of a $5,000 penalty for frivolous tax returns and for specified frivolous submissions other than returns, if the purported returns or specified submissions are either based upon a position identified as frivolous by the IRS in a published list or reflect a desire to delay or impede tax administration. Pub. L. No. 109-432, § 407(a), 120 Stat. 2922 (2006). The term "specified submission" means: a request for a hearing under section 6320 (relating to notice and opportunity for hearing on filing of a notice of lien), a request for hearing under section 6330 (relating to notice and opportunity for hearing before levy), an application under section 6159 (relating to agreements for payment of tax liability in installments), an application under section 7122 (relating to compromises), or an application under section 7811 (relating to taxpayer assistance orders). This amendment is effective for frivolous returns or specified

frivolous submissions made after March 15, 2007, the release date of Notice 2007-30, 2007-1 C.B. 883, which identified the list of frivolous positions (last updated by Notice 2010-33, 2010-17 I.R.B. 609).

Section 6673(a) allows the Tax Court to impose a penalty of up to $25,000 when it appears that:

- a taxpayer instituted or maintained a proceeding primarily for delay,
- a taxpayer's position in such proceeding is frivolous or groundless, or
- a taxpayer unreasonably failed to pursue administrative remedies.

Courts provide a forum for litigation of taxpayers' bona fide disputes with the IRS. The courts' ability to perform that function is impeded when a taxpayer files a petition for some other reason, such as to defy the law or to delay the inevitable. Consequently, Congress gave courts discretion to impose penalties on taxpayers who engage in such conduct, to deter frivolous litigation and to induce taxpayers to conform their conduct to settled principles of law before pursuing litigation. A court may impose a section 6673 penalty on its own, even if the IRS does not make a motion for sanctions. Leyshon v. Commissioner, T.C. Memo 2015-104, 109 T.C.M. (CCH) 1535 (2015). "The purpose of § 6673 . . . is to induce litigants to conform their *behavior* to the governing rules regardless of their subjective beliefs. Groundless litigation diverts the time and energies of judges from more serious claims; it imposes needless costs on other litigants. Once the legal system has resolved a claim, judges and lawyers must move on to other things. They cannot endlessly rehear stale arguments. . . . [T]here is no constitutional right to bring frivolous suits . . . . People who wish to express displeasure with taxes must choose other forums, and there are many available." Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986) (emphasis in original). A penalty under section 6673 may be assessed against the taxpayer even when the taxpayer relied on the advice of an attorney. Best v. Commissioner, T.C. Memo. 2014-72, 107 T.C.M. (CCH) 1376 (2014).

Taxpayers who appeal a decision on frivolous grounds may be subject to sanctions under Rule 38 of the Federal Rules of Appellate Procedure. Sanctions may include single or double costs and damages to appellee. Courts have "sounded a cautionary note to those who would persistently raise arguments against the income tax which have been put to rest for years. The full range of sanctions in Rule 38 hereafter shall be summoned in response to a totally frivolous appeal." Crain v. Commissioner, 737 F.2d 1417, 1418 (5th Cir. 1984).

A tax return preparer, as defined by section 7701(a)(36), who prepares any return or claim of refund with respect to which any part of an understatement of liability is due to an unreasonable position, including any frivolous position discussed in this outline, and who knew or reasonably should have known of the position, may be required to pay a penalty equal to the greater of $1,000 or 50 percent of the income derived by the tax return preparer with respect to preparing the return or claim for refund. I.R.C. § 6694(a). The minimum penalty amount increases to the greater of $5,000 or 75 percent of the income derived by the tax return preparer with respect to preparing the return or claim for refund for willful or reckless conduct of the tax return preparer. I.R.C. § 6694(b). The IRS may impose a penalty of $1,000 for aiding or assisting in the preparation or presentation of any portion of a return with knowledge that it will result in an understatement of tax liability. I.R.C. § 6701(a).

Taxpayers who rely on frivolous arguments may also face criminal prosecution. These taxpayers may be convicted of a felony for attempting to evade or defeat tax. I.R.C. § 7201. Section 7201 provides as a penalty a fine of up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 5 years. Similarly, taxpayers may be convicted of a felony for willfully making and signing under penalties of perjury any return, statement, or other document that the person does not believe to be true and correct as to every material matter. I.R.C. § 7206(1). The penalty for violating section 7206 is a fine of up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 3 years. Any individual found guilty of either offense may be subject to an increased fine of up to $250,000. 18 U.S.C.
§ 3571(b)(3).

Persons who promote frivolous arguments and those who assist taxpayers in claiming tax benefits based on frivolous arguments may be prosecuted for a criminal felony for which the penalty is up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 3 years for assisting with or advising about the preparation or presentation of a false return or other document under the internal revenue laws. I.R.C. § 7206(2). Any individual found guilty of a felony under section 7206 may be subject to an increased fine of up to $250,000. 18 U.S.C. § 3571(b)(3).

Relevant Case Law:

Graffia v. Commissioner, 114 A.F.T.R.2d (RIA) 2014-6415 (7th Cir. 2014) – the Seventh Circuit, characterizing the appellant's arguments as frivolous, affirmed the Tax Court and warned the appellant that further frivolous appeals would result in sanctions under Federal Rules of Appellate Procedure Rule 38.

Jacobsen v. Commissioner, 551 F. App'x 950 (10th Cir. 2014) – the appellant argued that federal income tax is an excise tax on privileged activities; the Tenth Circuit upheld the imposition of a penalty under I.R.C. § 6673(a) for making frivolous arguments and also a penalty under I.R.C. § 6662(d).

Worsham v. Commissioner, 531 F. App'x 310 (4th Cir. 2013) – the Fourth Circuit upheld the Tax Court's imposition of a penalty under I.R.C. § 6651(f) for fraudulent failure to file a return, relying on the numerous frivolous arguments the taxpayer made along with other indicia of fraud.

Baskin v. United States, 738 F.2d 975 (8th Cir. 1984) – the Eighth Circuit found that the IRS's assessment of a frivolous return penalty without a judicial hearing was not a denial of due process because there was an adequate opportunity for a later judicial determination of legal rights.

Jones v. Commissioner, 688 F.2d 17, 18 (6th Cir. 1982) – the Sixth Circuit found the taxpayer's claim that his wages were paid in "depreciated bank notes" as clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

Curtis v. Commissioner, T.C. Memo. 2013-12, 105 T.C.M. (CCH) 1100 (2013) – the court held that the taxpayer was liable for an I.R.C. § 6651(f) fraudulent failure to file penalty, found that the taxpayer's activities in making and promoting frivolous tax arguments "demonstrate[d] a clear intent to evade the assessment and collection of tax" and imposed a $25,000 fine under I.R.C. § 6673(a)(1).

Jones v. Commissioner, T.C. Memo. 2014-101, 107 T.C.M. (CCH) 1495 (2014) – the court upheld the imposition of penalties under I.R.C. §§ 6651(f), 6651(a)(2), 6654 and imposed a $25,000 penalty under I.R.C. § 6673 for each of the taxpayer's consolidated cases.

Other Cases:

United States v. Miller, 817 F. App'x 837, 838–39 (11th Cir. 2020); Buckardt v. Commissioner, 548 F. App'x 433 (9th Cir. 2013); Holker v. United States, 737 F.2d 751 (8th Cir. 1984); McAfee v. United States, 2001-1 U.S.T.C. (CCH) ¶ 50,433 (N.D. Ga. 2001).

Sanctions Imposed Generally in Tax Court Cases:

Calpino v. Commissioner, 819 F. App'x 860, 863 (11th Cir. 2020) – the Eleventh Circuit affirmed the Tax Court's imposition of a $25,000 § 6673

penalty where the taxpayers "had been repeatedly warned, in prior cases and by the Tax Court in the instant case, that if they continued to press their frivolous arguments—that they are not taxable persons and that their wages are not taxable income—then they would potentially face sanctions up to $25,000."

Balice v. Commissioner, 634 F. App'x 349, 350 (3d Cir. 2016), cert. denied, 137 S. Ct. 136, 196 L. Ed. 2d 105 (2016) – the Third Circuit affirmed the Tax Court's imposition of a $25,000 section 6673 penalty against a taxpayer who made the "patently frivolous" arguments that (1) the Constitution does not authorize an income tax; (2) the Sixteenth Amendment lacks an enactment clause; (3) only residents of Washington, D.C., and other federal enclaves are subject to the federal tax laws; (4) Congress cannot delegate the enforcement of the tax laws to the executive; (5) the United States cannot tax the fruits of Balice's fundamental right to work; (6) the United States may tax only the profit Balice earns after subtracting the value of his labor; and (7) tax liabilities are assessed against only "withholding agents," not individuals.

Curtis v. Commissioner, 648 F. App'x 689 (9th Cir. 2016) – the Ninth Circuit affirmed the Tax Court's imposition of a $25,000 section 6673 penalty for taking frivolous positions regarding the constitutionality and mandatory nature of income taxes.

Young v. Commissioner, 551 F. App'x 229 (5th Cir. 2014) – the Fifth Circuit upheld a $25,000 sanction the Tax Court imposed on the taxpayer and, in addition, imposed an $8,000 penalty under Federal Rules of Procedure Rule 38 on the taxpayer for bringing a frivolous appeal.

Lee v. Commissioner, 463 F. App'x 236 (5th Cir. 2012) – the Fifth Circuit affirmed the Tax Court's sua sponte imposition of a $1,000 section 6673 penalty when the taxpayer had argued that the amounts shown on her Form 1099 were not taxable income, she was not a person subject to tax, and she was not involved in a trade or business.

Leyva v. Commissioner, 483 F. App'x 371 (9th Cir. 2012) – the Ninth Circuit affirmed the Tax Court's imposition of the section 6673 penalty against taxpayer after he argued that the IRS was prohibited from collecting income tax from him because he had filed a Form 1040 reporting zero income.

Thomason v. Commissioner, 401 F. App'x 921 (5th Cir. 2010) – the Fifth Circuit affirmed the Tax Court's imposition of a $2,000 penalty against taxpayer under section 6673 because he made numerous frivolous arguments, including that the section 6020(b) substitute tax return prepared by the IRS was invalid and

that United States citizens are exempt from paying income tax on income earned in the United States.

Boggs v. Commissioner, 569 F.3d 235 (6th Cir. 2009) – the Sixth Circuit affirmed the Tax Court's imposition of a penalty under section 6673 against a taxpayer who made the frivolous argument that wages are not taxable income and imposed an additional penalty of $8,000 for making a frivolous appeal under Federal Rules of Appellate Procedure Rule 38.

Deyo v. United States, 296 F. App'x 157 (2d Cir. 2008) – the Second Circuit held that the IRS complied with any applicable personal approval requirement of section 6751 and upheld the assessment of penalties against a married couple for filing frivolous income tax returns, on which the taxpayers claimed zero adjusted gross income based on the frivolous position that they did not receive any income from sources listed in the regulations under section 861.

Szopa v. United States, 460 F.3d 884 (7th Cir. 2006) – the Seventh Circuit found that a frivolous tax appeal warranted a presumptive sanction of $4,000, and imposed an $8,000 sanction against the taxpayer for repeatedly filing frivolous appeals.

Gass v. United States, 4 F. App'x 565 (10th Cir. 2001) – the Tenth Circuit imposed an $8,000 penalty on the taxpayer for contending that taxes on income from real property are unconstitutional.

United States v. Rempel, 87 A.F.T.R.2d 2001-1810 (D. Alaska 2001) – the court warned the taxpayers of sanctions and stated that "[i]t is apparent to the court from some of the papers filed by the Rempels that they have at least had access to some of the publications of tax protester organizations. The publications of these organizations have a bad habit of giving lots of advice without explaining the consequences which can flow from the assertion of totally discredited legal positions and/or meritless factual positions."

Nitschke v. Commissioner, T.C. Memo. 2016-78, 111 T.C.M. (CCH) 1356 (2016) – noting that the court had imposed penalties on petitioners on multiple occasions for raising frivolous arguments, the court imposed a penalty of $10,000 under I.R.C. § 6673.

Waltner v. Commissioner, T.C. Memo. 2014-133, 108 T.C.M. (CCH) 6 (2014) – the court imposed a penalty of $10,000 under I.R.C. § 6673 and upheld the addition to tax under I.R.C. § 6651.

Hill v. Commissioner, T.C. Memo. 2013-264, 106 T.C.M. (CCH) 586 (2014) – the court imposed a penalty of $20,000 against a taxpayer who made the "frivolous and groundless arguments" that "(1) he is not a person statutorily made liable for the income tax, (2) the income tax is an excise tax, (3) he did not have income within the meaning of the Sixteenth Amendment, and (4) the income tax does not apply to the receipts of all American citizens."

Precourt v. Commissioner, T.C. Memo. 2010-24, 99 T.C.M. (CCH) 1112 (2010) – against a background of eleven separate actions in which the taxpayer advanced frivolous arguments in both Tax Court and district court, as well as previous sanctions against him of over $22,000, the Tax Court dismissed his case and imposed the maximum penalty of $25,000 for failing to appear for court proceedings and for failing to comply with court orders. In addition to his dilatory conduct, his petition was plagued with frivolous constitutional and other claims.

McCammon v. Commissioner, T.C. Memo. 2008-114, 95 T.C.M. (CCH) 1421 (2008) – the court imposed a $25,000 sanction against a taxpayer who argued that she "did not have any income 'in a constitutional sense,'" despite almost $200,000 paid to her in her medical practice and despite being previously warned by the court against instituting meritless proceedings.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006) – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments "characteristic of tax-protester rhetoric" that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

Haines v. Commissioner, T.C. Memo. 2000-126, 79 T.C.M. (CCH) 1844, 1846 (2000) – court imposed a $25,000 penalty, stating, "[Taxpayer] knew or should have known that his position was groundless and frivolous, yet he persisted in maintaining this proceeding primarily to impede the proper workings of our judicial system and to delay the payment of his Federal income tax liabilities."

Other Cases:

Heger v. United States, 114 Fed. Cl. 204 (2014); Duggan v. Commissioner, T.C. Memo. 2014-17, 107 T.C.M. (CCH) 1099 (2014); Hill v. Commissioner,

T.C. Memo. 2013-265, 106 T.C.M. (CCH) 590 (2014); Rodriguez v. Commissioner, T.C. Memo. 2009-92, 97 T.C.M. (CCH) 1482 (2009); Rhodes v. Commissioner, T.C. Memo. 2008-225, 96 T.C.M. (CCH) 215 (2008); Hanloh v. Commissioner, T.C. Memo. 2006-194, 92 T.C.M. (CCH) 266 (2006).

Sanctions Imposed in Collection Due Process Cases:

Oropeza v. Commissioner, 402 F. App'x 221 (9th Cir. 2010) – the Ninth Circuit affirmed the imposition of a $10,000 penalty on the taxpayer for raising frivolous and groundless arguments related to collection due process.

Goff v. Commissioner, 135 T.C. 231 (2010) – the court held that the IRS may proceed with collection of taxpayer's unpaid taxes and penalties because the bonded promissory note she presented to the IRS did not constitute payment of her liabilities. The court also held that her position was groundless and her arguments in support of the position were frivolous, and it imposed a $15,000 penalty against her under section 6673.

Tinnerman v. Commissioner, T.C. Memo. 2010-150, 100 T.C.M. (CCH) 20 (2010) – the court imposed a $25,000 penalty under section 6673 in a CDP case for delaying the proceedings by making "stale and recycled" frivolous arguments.

Pierson v. Commissioner, 115 T.C. 576, 581 (2000) – the court considered imposing sanctions against the taxpayer, but decided against doing so, stating, "we regard this case as fair warning to those taxpayers who, in the future, institute or maintain a lien or levy action primarily for delay or whose position in such a proceeding is frivolous or groundless."

Other Cases:

Best v. Commissioner, T.C. Memo. 2014-72, 107 T.C.M. (CCH) 1376 (2014); Battle v. Commissioner, T.C. Memo. 2009-171, 98 T.C.M. (CCH) 45 (2009); Oropeza v. Commissioner, T.C. Memo. 2008-94, 95 T.C.M. (CCH) 1367 (2008); Hassell v. Commissioner, T.C. Memo. 2006-196, 92 T.C.M. (CCH) 273 (2006); Burke v. Commissioner, 124 T.C. 189 (2005); Roberts v. Commissioner, 118 T.C. 365 (2002).

Sanctions Imposed Against Taxpayer's Counsel:

Wegbreit v. Commissioner, 129 A.F.T.R.2d 2022-588 (7th Cir. 2022) – the Seventh Circuit imposed $5,000 in sanctions against an attorney who had

previously been warned about the consequences of bringing frivolous tax appeals.

May v. Commissioner, T.C. Memo 2016-43, 111 T.C.M. (CCH) 1179 (2016), aff'd sub nom. Best v. Commissioner, 702 F. App'x 615 (9th Cir. 2017) – the court imposed $7,188 of sanctions against the taxpayers' attorney for multiplying proceedings "unreasonably and vexatiously."

Waltner v. Commissioner, T.C. Memo. 2014-133, 108 T.C.M. (CCH) 6 (2014) – the court imposed sanctions on the taxpayers and ordered their counsel to show cause why the court should not impose on him excessive costs under I.R.C. section 6673.

Powell v. Commissioner, T.C. Memo. 2009-174, 98 T.C.M. (CCH) 56 (2009) – the court imposed $25,000 of sanctions against the taxpayer and $4,725 against his attorney for making frivolous arguments and delaying the proceedings.

Wetzel v. Commissioner, T.C. Memo. 2005-211, 90 T.C.M. (CCH) 266 (2005) – the court imposed a $15,000 penalty against Wetzel, a professional tax return preparer, for making frivolous arguments because he knew or should have known the arguments were frivolous.

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the argument that income received from sources within the United States is not taxable income, stating that "[t]he 861 argument is contrary to established law and, for that reason, frivolous" and imposed sanctions of $10,500 against the taxpayer's attorney as well as sanctions of $15,000 against the taxpayer for making such groundless arguments.

Edwards v. Commissioner, T.C. Memo. 2002-169, 84 T.C.M. (CCH) 24, 42 (2002) – the court found that sanctions were appropriate against both the taxpayer and his attorney for making groundless arguments and stated that "[a]n attorney cannot advance frivolous arguments to this Court with impunity, even if those arguments were initially developed by the client." In a supplemental opinion, the court sanctioned the taxpayer $24,000 and the attorney $13,050. Edwards v. Commissioner, T.C. Memo. 2003-149, 85 T.C.M. (CCH) 1357.

The Nis Family Trust v. Commissioner, 115 T.C. 523, 545–46 (2000) – the court, concluding that the taxpayers chose "to pursue a strategy of noncooperation and delay, undertaken behind a smokescreen of frivolous tax-protester arguments," imposed penalties in three docketed cases (including a $25,000

penalty), and also imposed sanctions of more than $10,600 against their attorney for arguing frivolous positions in bad faith.