

United States Court of Appeals
for the Seventh Circuit

Case No. 17-3348

Robert Edward Orth,
Appellant,

v.

Commissioner of Internal Revenue,
Appellee.

APPEAL FROM THE UNITED STATES TAX COURT

DOCKET NO: #18049-16

OPENING BRIEF OF APPELLANT

Robert Edward Orth
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Indianapolis, IN 46278-1503
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Brief of the Issues: (separate - 29 pgs.)

Issue A: Social Security amounts sought are not owed by Appellant.

Issue B: Regulation alone identifies the subject of 26 ch.1 tax, in violation of 16th Amdt.

Issue C: Costs recognized by law are wrongfully included in gross income.

Issue D: Due process, void for vagueness, lenity, clear language.

Issue E: Liens and levies, loss of passport privileges, violate procedural due process, no meaningful opportunity for a hearing.

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JURISDICTIONAL STATEMENT

On may 16, 2016, Appellant, who resides in Indiana, was issued two Notices of Deficiency relating to 2012 and 2013. Appellant timely petitioned US Tax Court on Aug 15, 2016. Tax Court’s final Order was issued on Oct. 12, 2017. Appellant timely filed a Notice of Appeal on or about Nov. 13, 2017. This Court has jurisdiction pursuant to 26 USC § 7482 and venue is proper.

EXHIBITS ON APPEAL

Appendix A to this Appeal contains several exhibits from the record below which support issues raised anew in this Court.

Ex.A: Notices of Deficiency for 2012 and for 2013 both issued on May 16, 2016.

1 **Ex.B:** Appellant's US Tax Court petition w/o exhibits.

2 **Ex.C:** Appellee's US Tax Court reply to Appellant's petition.

3 **Ex.D:** US Tax Court's final order.

4 **Ex.E:** 1993 through 2016 editions of IRS Publication 17 stating that Appellant's *cost*
5 includes his personal "services" or "other property."

6 STATEMENT OF THE CASE

7
8 This appeal concerns the issues presented in Tax Court, and additional statutory
9 arguments that are prohibited in Tax Court. Tax Court's policy of imposing enormous
10 monetary sanctions for statutory arguments constitutes a fundamental error and miscarriage of
11 justice. A refusal or other failure to provide review of the issues presented herein serves to
12 preserve a plain violation of due process.

13 The law and the IRS' own instructions show Appellant to have no duty to keep records,
14 so he was unable to defend himself against the IRS' bald assertion that he owes or must file a
15 tax return relating to the taxable years of 2012 and 2013 now in controversy. Tax Court ruled
16 against the Appellant who would rather have argued the issues briefed herein but feared Tax
17 Court's reprisals or would have otherwise raised these issues (See **Ex.D** hereto, Order and
18 Decision for T.C. docket #18049-16 (Indianapolis, IN) dated October 12, 2017).

19 ON APPEAL presented are **1)** a matter concerning statutory scope and construction, **2)**
20 a matter of statutory and regulatory interpretation, **3)** right to appear and defend as a matter of
21 due process, **4)** the matter of lenity and how it is owed to Appellant due to the situation arising
22 from plain language of controlling provisions and how the Appellee fails to justify an opposing
23 policy or position, **and 5)** loss of passport privileges under 26 USC § 7345 after being deprived
24 of any meaningful review and exegesis of controlling provisions violates Appellant's rights to
25 procedural due process.

26 26 CFR 601.106(f) Conference and practice requirements. Practice and
27 conference procedure before Appeals is governed by Treasury Department Circular 230
28 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In
addition to such rules but not in modification of them, the following rules are also
applicable to practice before Appeals:

(1) Rule I. An exaction by the U.S. Government, *which is not based upon law,
statutory or otherwise, is a taking of property without due process of law, in violation*

1 *of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals*
2 *representative in his or her conclusions of fact or application of the law, shall hew to*
3 *the law and the recognized standards of legal construction. It shall be his or her duty*
4 *to determine the correct amount of the tax, with strict impartiality as between the*
taxpayer and the Government, and without favoritism or discrimination as between
taxpayers.

5 To date, the way in which Appellant has been menaced has been void of this measure of
6 due process, and the law remains entirely off limits. The present controversy and the degree to
7 which the Appellee has dreamt up the Appellant's financial ruin are a retaliatory strike arising
8 vengefully from his willingness to confront his servants with the law; plain and simple.

9 Appellee now tests its belief and understanding that it owns Tax Court, that it owns this
10 Court, and that no American or law can stand in its way. Proof of this will lie in Appellee's
11 response to this brief, wherein this Court will witness only evasion, diatribe, and the likening of
12 the Appellant to some sort of *anti-tax movement* clown. The Appellant is entitled to access the
13 law and to see for himself that it operates to found the authority the Appellee, to date, has been
14 unable to prove is its to wield.

15 STANDARD OF REVIEW

16 Appellant seeks reasoned adjudication of conclusions that are, without question,
17 unpopular at best, but which are entirely founded upon the plain language of relevant
18 provisions. Appellant seeks the invalidation of Appellee's [determination] that he owes the
19 amounts sought, and a holding that the collection by distraint of the amounts sought violates his
20 rights to due process.

21 5 USC § 706 Scope of review.- *To the extent necessary to decision* and when
22 presented, the reviewing court *shall decide all relevant questions of law, interpret*
constitutional and statutory provisions, and determine the meaning or applicability of
23 *the terms of an agency action. The reviewing court shall -*

- 24 (1) compel agency action unlawfully withheld or unreasonably delayed; and
25 (2) hold unlawful and set aside agency action, findings, and conclusions found
to be -
26 (A) *arbitrary, capricious, an abuse of discretion, or otherwise not in*
accordance with law;
27 (B) *contrary to constitutional right, power, privilege, or immunity;*
28 (C) *in excess of statutory jurisdiction, authority, or limitations, or short of*
statutory right;
(D) *without observance of procedure required by law;*

1 (E) unsupported by substantial evidence in a case subject to sections 556 and
2 557 of this title or otherwise reviewed on the record of an agency hearing provided by
statute; or

3 (F) unwarranted by the facts to the extent that the facts are subject to trial *de*
4 *novo* by the reviewing court.

5 In making the foregoing determinations, the court shall review the whole record
or those parts of it cited by a party, and due account shall be taken of the rule of
prejudicial error.

6 Review of “a tax court’s legal conclusions and interpretations of the tax code *de novo*.”
7 *Ocmulgee Fields, Inc. v. C.I.R.*, 613 F.3d 1360, 1364 (CA11 2010). Tax Court’s “findings of
8 facts and factual inferences, whether based on oral, documentary, or stipulated evidence, for
9 clear error.” *Id.* “A finding of fact is clearly erroneous if the record lacks substantial evidence
10 to support it, so that our review of the entire evidence leaves us with the definite and firm
11 conviction that a mistake has been committed.” *Id.* (quoting *Atl. Athletic Club v. C.I.R.*, 980
12 F.2d 1409, 1411–12 (CA11 1993)).

13 This case is not about facts but rather is about statutory construction. (See *Barnhart,*
14 *Comm’r of Social Security v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (“As in all
15 statutory construction cases, we begin with the language of the statute. The first step “is to
16 determine whether the language at issue has a plain and unambiguous meaning with regard to
17 the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340
18 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989)). The
19 inquiry ceases “if the statutory language is unambiguous and ‘the statutory scheme is coherent
and consistent.’” 519 U.S., at 340.”).

20 STATEMENT OF THE ISSUES

21 Tax Court abdicated its role as a court “sitting to interpret the law” in 1984 and will
22 impose severe sanctions upon any petitioner, there, who raises statutory issues that court finds
23 uncomfortable, distasteful, or inconvenient.

24
25 “...The logical force requiring rejection of their arguments-apart from their *assertions*
26 *of personal political philosophy which do not provide a basis for us, a Court sitting to*
27 *interpret the law*, to decide the questions dispositive of this case...” See *Rowlee v.*
28 *C.I.R.*, 80 USTC 1111, 1120 (1983), quoting *Reading v. C.I.R.*, 70 TC 730 (1978),
aff’d. 614 F.2d 159 (CA8 1980, at 173).

1 **Compare:**

2 “...*the pleadings do not raise a genuine issue of material fact* respecting Respondent’s
3 determinations . . . *but rather involve only issues of law.* (Cite omitted) Therefore
4 Respondent’s motion for judgment on the pleadings will be granted. . . . *The final
matter we consider is [penalties].*” See *Abrams v. C.I.R.*, 82 USTC 403, 408 (1984).

5 Tax Court sits to decide issues at law one year, but sits to penalize all those who dare
6 bring issues at law in the next year; this is a [judicial] *holiday* spanning over thirty years.
7 Appellant seeks review of issues not raised below due to the lower court’s record of imposing
8 26 USC § 6673 monetary sanctions on those who make statutory arguments against IRS’
9 standard operating procedures.

10 **Tax Court docket number:**

11 #11315-94 Chris Bernsdorff was penalized \$1000.00 for asking Tax Court to indulge
12 issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

13 #15685-94 Susan Eckles was penalized \$3000.00 for asking Tax Court to indulge issues
14 concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

15 #3176-95 Robert and Mauris Justice were penalized \$3750.00 for asking Tax Court to
16 indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

17 #1610-95 Richard and Pamela Bryan were threatened with penalties for asking Tax
18 Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

19 #8766-95 William Santangelo was penalized for asking Tax Court to indulge issues
20 concerning applicable provisions, *e.g.*, 26 USC § 83 and others. (See Memorandum
21 Opinion, filed 10/2/95, pg.13, \$2,500.00).

22 #339-95 Stephen Talmage was penalized \$6500.00 for offering to concede all facts in
23 exchange for “how to comply with § 83.” (See Order and Decision, 3/11/96, pg.8, 19,
24 20).

25 *Santangelo*, 9th Cir.App.#95-70866, and *Bryan*, 9th Cir.App. #95-70800, \$2000.00
26 each.

27 Due to this climate of willful oppression Appellant’s reasonable apprehension prevented
28 him from raising issues he otherwise would have sought to litigate. Issues now raised for the
first time fit established exceptions to the bar against appellate review of new issues, *to wit:*

//

1 **Issue A: Social Security provisions have been misapplied in this case.** (pp.3-5 of Brief).

2 **Issue B: As a citizen of the United States, the Appellant is named solely through the**
3 **promulgation of Treasury Regulations as a subject of the tax now at issue, in violation of**
4 **the 16th Amdt. which authorizes only Congress to lay and collect income taxes. Treasury**
5 **Regulation 26 CFR 1.1-1 is void as derogation or vitiating of, or deviation from, statute 26**
6 **USC § 1. Without 26 CFR 1.1-1 there's no authority which subjects a "citizens of the**
7 **United States" to the tax imposed by 26 USC § 1. The "deficiency" alleged by Appellee is**
8 **therefore invalid.** (pp.5-8 of Brief).

9 **Issue C: Appellee is in violation of 26 USC § 83(a) in its determination of the subject**
10 **deficiency. In doing so, the executive has chosen which subject to tax in violation of the**
11 **16th Amdt.** (pp.8-19 of Brief).

12 **Issue D: The income tax imposed under 26 USC § 1 is not imposed by clear language;**
13 **lenity; void for vagueness; misleading statements from the IRS. The deficiency at issue is**
14 **void and amounts in controversy cannot be collected without a violation of Appellant's**
15 **rights to due process.**

16 **D(a) If the Appellee's interpretation regarding 26 USC § 83(a) is upheld, it must be**
17 **viewed as having misled the Appellant as to his duties and liabilities under 26 USC.**
18 **(pp.20-22 of Brief).**

19 **D(b) The tax at issue is not imposed by clear language; lenity.** (pp.22-25 of Brief).

20 **Issue E: Without clear and definitive explanation of the law and proof that it has operated**
21 **according to its letter, Appellant's right to travel out of the country will be suspended**
22 **while access to the law is denied. Rights to due process are violated when Appellant is**
23 **sanctioned under § 7345 without proof the governing law has operated in accordance with**
24 **well established canons and maxims. This requires Appellee's alleged deficiency be**
25 **declared invalid.** (pp.25-28 of Brief).

26 NEW ISSUES ON APPEAL

27 A fundamental error or miscarriage of justice exception to the bar against raising new
28 issues has been recognized. (See *US v. Addonizio*, 442 U.S. 178, 185 (1979); *Hormel v.*
Helvering, 312 U.S. 552, 555-56 (1941); *McGinnis v. Ingram Equipment Co., Inc.*, 918 F.2d
1491, 1495 (CA11 1990); *Mills v. US*, 36 F.3d 1052, 1055-56 (CA11 1994); *Burke v. US*, 152
F.3d 1329, 1331 (CA11 1998); *Richards v. US*, 837 F.2d 965, 966 (CA11 1988); *Scottsdale*
Insurance Co. v. Flowers, 513 F.3d 546, 552 (CA6 2008)). Another exception to this rule is
When new issues are purely legal in nature, e.g., constitutional,¹ statutory,² or relating to legal
doctrines.³

TABLE OF AUTHORITIES

Cases:	Brief page #
<i>Ali v. Federal Bureau of Prisons</i> , 128 S.Ct. 831 (2008)	14-15
<i>Alves v. C.I.R.</i> , 734 F.2d 478 (CA9 1984)	9
<i>Arcia v. Florida Sec. of State</i> , 746 F.3d 1273 (CA11 2014)	14
<i>Ashland Hospital Corp. v. RLI Ins. Co.</i> , Civil #13-143-DLB-EBA (E.D. Kentucky, N. Div., Ashland, March 17, 2015)	14
<i>Barnhart, Comm'r of Social Security v. Sigmon Coal Co., Inc.</i> , 534 US 438 (2002)	24
<i>Bell v. Burson</i> , 402 US 535 (1971)	26
<i>Bordenkircher v. Hayes</i> , 434 US 357 (1978)	27
<i>Browning-Ferris Industries of Vermont v. Kelso Disposal, Inc.</i> , 492 US 257 (1989)	24
<i>Burnet v. Niagra Falls Brewing Co.</i> , 282 US 648 (1931)	24
<i>Ceichon v. City of Chicago</i> , 686 F.2d 511 (CA7 1982)	26

¹ See, e.g., *Glidden Co. v. Zdanok*, 370 US 530, 535-37 (1962) (failure to question absence of article III judge does not forgo issue); *Federal Election Comm'n v. Lance*, 635 F.2d 1132, 1136 (CA5) (*en banc*) (facial challenge to constitutionality of Federal Corrupt Practices Act could be raised for first time on appeal when facts fully developed), *cert. denied*, 453 US 917 (1981); *McDonald v. Illinois*, 557 F.2d 596, 601 (CA7) (failure of state's counsel to raise eleventh amendment immunity below does not waive issue), *cert. denied*, 434 US 966 (1977), *cert. granted and judgment vacated*, No. 87-1384 (Jan. 23, 1989) (1989 W.L. 4558).

² See, e.g., *Allen v. State Bd. of Elections*, 393 US 544, 553-54 (1969) (in the interest of judicial economy, applicability of Voting Rights Act provision not precluded from consideration by failure to raise issue below where all facts undisputed); *Telco Leasing v. Transwestern Title Co.*, 630 F.2d 691, 693-94 (CA9 1980) (where issue purely one of law and not affected by factual record below appellate court has discretion to consider for first time application of correct state statute concerning attorney's fees); *Higginbotham v. Ford Motor Co.*, 540 F.2d 762, 768 n.10 (CA5 1976) (new argument based on state wrongful death statute considered on appeal where purely legal question raised and post-oral argument briefs submitted); *Smith v. Pasqualetto*, 276 F.2d 765, 767-78 (CA1 1957) (where relevant "Sunday statute" overlooked below, consideration on appeal imposed no substantial injustice upon parties if costs of appeal imposed on appellant).

³ See, e.g., *Bellotti v. Baird*, 428 US 132, 143 n.10 (1976) (purely legal issue of federal abstention may be raised for first time on appeal); *National Advertising Co. v. City of Rolling Meadows*, 789 F.2d 571, 574-75 (CA7 1986) (case disposed of on new legal issue to avoid deciding constitutional issue); *Chicago B. & Q.R.R. v. City of N. Kansas City*, 276 F.2d 932, 939 (CA8 1960) (public policy underlying abstention doctrine merits appellate consideration despite failure to raise issue below); *Booking v. General Star Management Co.*, 254 F.3d 414, 419-420 (CA2 2001) (consideration of new but purely legal issues on appeal is discretionary); See generally Robert J. Martineau, Considering New Issues on Appeal: The General Rule and the Gorilla Rule, 40 VAND.L.REV. 1023, n.1, at 1035-36.

1	<i>Centel Communications Co. v. CIR</i> , 920 F.2d 1335 (CA7 1990)	9
2	<i>C.I.R. v. Acker</i> , 361 US 87 (1959)	8
3	<i>Cohn v. C.I.R.</i> , 73 USTC 443 (1979)	9
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5	<i>Corcoran v. Buss</i> , 551 F.3d 703 (CA7 2008)	28
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10	<i>Electronic Privacy Center v. U.S. Dept. of Homeland Security</i> ,	
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12	<i>FDA v. Brown & Williamson</i> , 153 F.3d 155 (CA4 1998),	
13	aff'd 529 US 120 (2000)	6-7
14	<i>Florez v. Holder</i> , U.S. Attorney General, Civil #14-874	
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16	<i>Florida Health Sciences Center v. Sec. of U.S. Dept. of Health and Human</i>	
17	<i>Sves.</i> , Civil #14-0791 (ABJ) (USDC of D.C. March 31, 2015)	14
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19	<i>Gregory v. Helvering</i> , 293 US 465 (1935)	24
20	<i>Gudmundsson v. US</i> , 634 F.3d 212 (CA2 2011)	9
21	<i>Harkness v. US</i> , 727 F.3d 465 (CA6 2013)	14
22	<i>Hart v. Massanari</i> , 266 F.3d 1155 (CA9 2001)	18
23	<i>Hartman v. C.I.R.</i> , 65 T.C. 542 (T.C. 1975)	22
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28	<i>Revocable Trust</i> , #12-2557-bk(L) (CA2 December 8, 2014)	14

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3	<i>Kent v. Dulles</i> , 357 US 116 (1958)	26
4	<i>Lucas v. Alexander</i> , 279 US 573 (1929)	24
5	<i>Miller v. Standard Nut Margarine Co.</i> , 284 US 498 (1932)	24
6	<i>Montelepre Systemed, Inc. v. C.I.R.</i> , 956 F.2d 496 (CA5 1992)	9
7	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 US 306 (1950)	22
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21	<i>Talmage v. Comm'r of IRS</i> , USTC docket #339-95, 71 T.C.M. 2370 (1996)	<i>passim</i>
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5	<i>U.S. v. Gonzales</i> , 520 U.S. 1 (1997)	14
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13	<i>US v. Murphy</i> , 65 F.3d 758 (CA9 1995)	28
14	<i>US. v National Dairy Corp.</i> , 372 US 29 (1963)	24
15	<i>US v. Osmani</i> , 20 F.3d 266 (CA7 1994)	28
16	<i>US v. Segal, et al.</i> , 495 F.3d 826 (CA7 2007)	28
17	<i>US v. Shill</i> , 740 F.3d 1347 (CA9 January 14, 2014)	14
18	<i>US v. Tarallo</i> , 380 F.3d 1174 (CA9 2004)	28
19	<i>US v. Warda</i> , 285 F.3d 573 (CA7 2002)	28
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21	<i>US v. Weisinger</i> , #13-3655-cr (CA2 October 6, 2014)	14
22	<i>US v. Vallone</i> , 110 A.F.T.R.2d (RIA) 6110 (CA7 2012)	6, 8
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24	<i>White v. Ford Motor Co.</i> , 312 F.3d 998 (CA9 2000)	28
25	<i>WNET, et al. v. Aero, Inc., et al.</i> , 722 F.3d 500 (CA2 July 16, 2013)	14
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STATUTES, REGULATIONS, AND OTHER PROVISIONS

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26 USC:

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26 USC § 1 - Tax imposed.-

(a) Married individuals filing joint returns and surviving spouses.- There is hereby imposed on the taxable income of -

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2 (a)), a tax determined in accordance with the following table:

If taxable income is: The tax is:

- Not over \$36,900 15% of taxable income.
- Over \$36,900 but not over \$89,150 \$5,535, plus 28% of the excess over \$36,900.
- Over \$89,150 but not over \$140,000 \$20,165, plus 31% of the excess over \$89,150.
- Over \$140,000 but not over \$250,000 \$35,928.50, plus 36% of the excess over \$140,000.
- Over \$250,000 \$75,528.50, plus 39.6% of the excess over \$250,000.

(b) Heads of households.- There is hereby imposed on the taxable income of every head of a household (as defined in section 2 (b)) a tax determined in accordance with the following table:

If taxable income is: The tax is:

- Not over \$29,600 15% of taxable income.
- Over \$29,600 but not over \$76,400 \$4,440, plus 28% of the excess over \$29,600.
- Over \$76,400 but not over \$127,500 \$17,544, plus 31% of the excess over \$76,400.
- Over \$127,500 but not over \$250,000 \$33,385, plus 36% of the excess over \$127,500.
- Over \$250,000 \$77,485, plus 39.6% of the excess over \$250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households).- There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is: The tax is:

- Not over \$22,100 15% of taxable income.
- Over \$22,100 but not over \$53,500 \$3,315, plus 28% of the excess over \$22,100.
- Over \$53,500 but not over \$115,000 \$12,107, plus 31% of the excess over \$53,500.
- Over \$115,000 but not over \$250,000 \$31,172, plus 36% of the excess over \$115,000.
- Over \$250,000 \$79,772, plus 39.6% of the excess over \$250,000.

(d) Married individuals filing separate returns.- There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a

1 single return jointly with his spouse under section 6013, a tax determined in accordance
2 with the following table:

3 If taxable income is: The tax is:

4 Not over \$18,450 15% of taxable income.

5 Over \$18,450 but not over \$44,575 \$2,767.50, plus 28% of the excess over \$18,450.

6 Over \$44,575 but not over \$70,000 \$10,082.50, plus 31% of the excess over \$44,575.

7 Over \$70,000 but not over \$125,000 \$17,964.25, plus 36% of the excess over \$70,000.

8 Over \$125,000 \$37,764.25, plus 39.6% of the excess over \$125,000.

9 (e) Estates and trusts.- There is hereby imposed on the taxable income of -

10 (1) every estate, and

11 (2) every trust, taxable under this subsection a tax determined in accordance with
12 the following table:

13 If taxable income is: The tax is:

14 Not over \$1,500 15% of taxable income.

15 Over \$1,500 but not over \$3,500 \$225, plus 28% of the excess over \$1,500.

16 Over \$3,500 but not over \$5,500 \$785, plus 31% of the excess over \$3,500.

17 Over \$5,500 but not over \$7,500 \$1,405, plus 36% of the excess over \$5,500.

18 Over \$7,500 \$2,125, plus 39.6% of the excess over \$7,500.

19 (f) Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that
20 inflation will not result in tax increases

21 (1) In general.- Not later than December 15 of 1993, and each subsequent
22 calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables
23 contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning
24 in the succeeding calendar year.

25 (2) Method of prescribing tables.- The table which under paragraph (1) is to apply
26 in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be,
27 with respect to taxable years beginning in any calendar year shall be prescribed -

28 (A) except as provided in paragraph (8), by increasing the minimum and
maximum dollar amounts for each rate bracket for which a tax is imposed under such
table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under
subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect
the adjustments in the rate brackets.

(3) Cost-of-living adjustment.-For purposes of paragraph (2), the cost-of-living
adjustment for any calendar year is the percentage (if any) by which -

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1992.

(4) CPI for any calendar year.-For purposes of paragraph (3), the CPI for any
calendar year is the average of the Consumer Price Index as of the close of the 12-
month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term "Consumer Price Index" means the last

1 Consumer Price Index for all-urban consumers published by the Department of Labor.
2 For purposes of the preceding sentence, the revision of the Consumer Price Index which
3 is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

3 (6) Rounding

4 (A) In general.- If any increase determined under paragraph (2)(A), section 63
5 (c)(4), section 68(b)(2) or section 151 (d)(4) is not a multiple of \$50, such increase shall
6 be rounded to the next lowest multiple of \$50.

5 (B) Table for married individuals filing separately

6 In the case of a married individual filing a separate return, subparagraph (A) (other than
7 with respect to sections 63 (c)(4) and 151 (d)(4)(A)) shall be applied by substituting
8 “\$25” for “\$50” each place it appears.

8 (7) Special rule for certain brackets

8 (A) Calendar year 1994

9 In prescribing the tables under paragraph (1) which apply with respect to taxable years
10 beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar
11 amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate
12 begins under any table contained in subsection (a), (b), (c), (d), or (e).

11 (B) Later calendar years.- In prescribing tables under paragraph (1) which apply
12 with respect to taxable years beginning in a calendar year after 1994, the cost-of-living
13 adjustment used in making adjustments to the dollar amounts referred to in
14 subparagraph (A) shall be determined under paragraph (3) by substituting “1993” for
15 “1992”.

14 (8) Elimination of marriage penalty in 15-percent bracket.- With respect to
15 taxable years beginning after December 31, 2003, in prescribing the tables under
16 paragraph (1) -

16 (A) the maximum taxable income in the 15-percent rate bracket in the table
17 contained in subsection (a) (and the minimum taxable income in the next higher taxable
18 income bracket in such table) shall be 200 percent of the maximum taxable income in
19 the 15-percent rate bracket in the table contained in subsection (c) (after any other
20 adjustment under this subsection), and

19 (B) the comparable taxable income amounts in the table contained in subsection
20 (d) shall be 1/2 of the amounts determined under subparagraph (A).

21 (g) Certain unearned income of children taxed as if parent’s income

21 (1) In general.- In the case of any child to whom this subsection applies, the tax
22 imposed by this section shall be equal to the greater of -

22 (A) the tax imposed by this section without regard to this subsection, or

23 (B) the sum of -

24 (i) the tax which would be imposed by this section if the taxable income of such
25 child for the taxable year were reduced by the net unearned income of such child, plus
26 (ii) such child’s share of the allocable parental tax.

26 (2) Child to whom subsection applies. This subsection shall apply to any child for
27 any taxable year if -

27 (A) such child -

27 (i) has not attained age 18 before the close of the taxable year, or

28 (ii)

1 (I) has attained age 18 before the close of the taxable year and meets the age
2 requirements of section 152 (c)(3) (determined without regard to subparagraph (B)
3 thereof), and

4 (II) whose earned income (as defined in section 911 (d)(2)) for such taxable year
5 does not exceed one-half of the amount of the individual's support (within the meaning
6 of section 152 (c)(1)(D) after the application of section 152 (f)(5) (without regard to
7 subparagraph (A) thereof)) for such taxable year,

8 (B) either parent of such child is alive at the close of the taxable year, and

9 (C) such child does not file a joint return for the taxable year.

10 (3) Allocable parental tax. For purposes of this subsection -

11 (A) In general.- The term "allocable parental tax" means the excess of -

12 (i) the tax which would be imposed by this section on the parent's taxable income
13 if such income included the net unearned income of all children of the parent to whom
14 this subsection applies, over

15 (ii) the tax imposed by this section on the parent without regard to this
16 subsection.

17 For purposes of clause (i), net unearned income of all children of the parent shall not be
18 taken into account in computing any exclusion, deduction, or credit of the parent.

19 (B) Child's share.- A child's share of any allocable parental tax of a parent shall
20 be equal to an amount which bears the same ratio to the total allocable parental tax as
21 the child's net unearned income bears to the aggregate net unearned income of all
22 children of such parent to whom this subsection applies.

23 (C) Special rule where parent has different taxable year.- Except as provided in
24 regulations, if the parent does not have the same taxable year as the child, the allocable
25 parental tax shall be determined on the basis of the taxable year of the parent ending in
26 the child's taxable year.

27 (4) Net unearned income. For purposes of this subsection -

28 (A) In general.- The term "net unearned income" means the excess of -

(i) the portion of the adjusted gross income for the taxable year which is not
attributable to earned income (as defined in section 911 (d)(2)), over

(ii) the sum of -

(I) the amount in effect for the taxable year under section 63 (c)(5)(A) (relating to
limitation on standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes
his deductions for the taxable year, the amount of the itemized deductions allowed by
this chapter for the taxable year which are directly connected with the production of the
portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income.- The amount of the net unearned income
for any taxable year shall not exceed the individual's taxable income for such taxable
year.

(C) Treatment of distributions from qualified disability trusts.- For purposes of
this subsection, in the case of any child who is a beneficiary of a qualified disability
trust (as defined in section 642 (b)(2)(C)(ii)), any amount included in the income of
such child under sections 652 and 662 during a taxable year shall be considered earned
income of such child for such taxable year.

1 (5) Special rules for determining parent to whom subsection applies.- For
2 purposes of this subsection, the parent whose taxable income shall be taken into account
3 shall be -

4 (A) in the case of parents who are not married (within the meaning of section
5 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

6 (B) in the case of married individuals filing separately, the individual with the
7 greater taxable income.

8 (6) Providing of parent's TIN.- The parent of any child to whom this subsection
9 applies for any taxable year shall provide the TIN of such parent to such child and such
10 child shall include such TIN on the child's return of tax imposed by this section for such
11 taxable year.

12 (7) Election to claim certain unearned income of child on parent's return

13 (A) In general. If -

14 (i) any child to whom this subsection applies has gross income for the taxable
15 year only from interest and dividends (including Alaska Permanent Fund dividends),

16 (ii) such gross income is more than the amount described in paragraph
17 (4)(A)(ii)(I) and less than 10 times the amount so described,

18 (iii) no estimated tax payments for such year are made in the name and TIN of
19 such child, and no amount has been deducted and withheld under section 3406, and

20 (iv) the parent of such child (as determined under paragraph (5)) elects the
21 application of subparagraph (B),

22 such child shall be treated (other than for purposes of this paragraph) as having no gross
23 income for such year and shall not be required to file a return under section 6012.

24 (B) Income included on parent's return.- In the case of a parent making the
25 election under this paragraph -

26 (i) the gross income of each child to whom such election applies (to the extent the
27 gross income of such child exceeds twice the amount described in paragraph
28 (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall
be the amount equal to the sum of -

(I) the amount determined under this section after the application of clause (i),
plus

(II) for each such child, 10 percent of the lesser of the amount described in
paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount
so described, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the
child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations.-

The Secretary shall prescribe such regulations as may be necessary or
appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate

(1) In general.- If a taxpayer has a net capital gain for any taxable year, the tax
imposed by this section for such taxable year shall not exceed the sum of -

(A) a tax computed at the rates and in the same manner as if this subsection had
not been enacted on the greater of -

- 1 (i) taxable income reduced by the net capital gain; or
2 (ii) the lesser of -
3 (I) the amount of taxable income taxed at a rate below 25 percent; or
4 (II) taxable income reduced by the adjusted net capital gain;
5 (B) 0 percent of so much of the adjusted net capital gain (or, if less, taxable
6 income) as does not exceed the excess (if any) of -
7 (i) the amount of taxable income which would (without regard to this paragraph)
8 be taxed at a rate below 25 percent, over
9 (ii) the taxable income reduced by the adjusted net capital gain;
10 (C) 15 percent of the lesser of -
11 (i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds
12 the amount on which a tax is determined under subparagraph (B), or
13 (ii) the excess of -
14 (I) the amount of taxable income which would (without regard to this paragraph)
15 be taxed at a rate below 39.6 percent, over
16 (II) the sum of the amounts on which a tax is determined under subparagraphs (A)
17 and (B),
18 (D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in
19 excess of the sum of the amounts on which tax is determined under subparagraphs (B)
20 and (C),
21 (E) 25 percent of the excess (if any) of -
22 (i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined
23 without regard to paragraph (11))), over
24 (ii) the excess (if any) of—
25 (I) the sum of the amount on which tax is determined under subparagraph (A)
26 plus the net capital gain, over
27 (II) taxable income; and
28 (F) 28 percent of the amount of taxable income in excess of the sum of the
amounts on which tax is determined under the preceding subparagraphs of this
paragraph.
(2) Net capital gain taken into account as investment income.- For purposes of
this subsection, the net capital gain for any taxable year shall be reduced (but not below
zero) by the amount which the taxpayer takes into account as investment income under
section 163 (d)(4)(B)(iii).
(3) Adjusted net capital gain.- For purposes of this subsection, the term “adjusted
net capital gain” means the sum of -
(A) net capital gain (determined without regard to paragraph (11)) reduced (but
not below zero) by the sum of—
(i) unrecaptured section 1250 gain, and
(ii) 28-percent rate gain, plus
(B) qualified dividend income (as defined in paragraph (11)).
(4) 28-percent rate gain
For purposes of this subsection, the term “28-percent rate gain” means the excess (if
any) of -
(A) the sum of -
(i) collectibles gain; and

1 (ii) section 1202 gain, over
2 (B) the sum of -
3 (i) collectibles loss;
4 (ii) the net short-term capital loss; and
5 (iii) the amount of long-term capital loss carried under section 1212 (b)(1)(B) to
6 the taxable year.

(5) Collectibles gain and loss.- For purposes of this subsection -

7 (A) In general.- The terms “collectibles gain” and “collectibles loss” mean gain or
8 loss (respectively) from the sale or exchange of a collectible (as defined in section 408
9 (m) without regard to paragraph (3) thereof) which is a capital asset held for more than
10 1 year but only to the extent such gain is taken into account in computing gross income
11 and such loss is taken into account in computing taxable income.

12 (B) Partnerships, etc. - For purposes of subparagraph (A), any gain from the sale
13 of an interest in a partnership, S corporation, or trust which is attributable to unrealized
14 appreciation in the value of collectibles shall be treated as gain from the sale or
15 exchange of a collectible. Rules similar to the rules of section 751 shall apply for
16 purposes of the preceding sentence.

(6) Unrecaptured section 1250 gain.- For purposes of this subsection -

17 (A) In general.- The term “unrecaptured section 1250 gain” means the excess (if
18 any) of -

19 (i) the amount of long-term capital gain (not otherwise treated as ordinary
20 income) which would be treated as ordinary income if section 1250 (b)(1) included all
21 depreciation and the applicable percentage under section 1250 (a) were 100 percent,
22 over

(ii) the excess (if any) of -

23 (I) the amount described in paragraph (4)(B); over

24 (II) the amount described in paragraph (4)(A).

25 (B) Limitation with respect to section 1231 property.- The amount described in
26 subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231
27 (a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in
28 section 1231 (c)(3)) for such year.

(7) Section 1202 gain.- For purposes of this subsection, the term “section 1202
gain” means the excess of -

(A) the gain which would be excluded from gross income under section 1202 but
for the percentage limitation in section 1202 (a), over

(B) the gain excluded from gross income under section 1202.

(8) Coordination with recapture of net ordinary losses under section 1231.- If any
amount is treated as ordinary income under section 1231 (c), such amount shall be
allocated among the separate categories of net section 1231 gain (as defined in section
1231 (c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(9) Regulations.- The Secretary may prescribe such regulations as are appropriate
(including regulations requiring reporting) to apply this subsection in the case of sales
and exchanges by pass-thru entities and of interests in such entities.

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1 (10) Pass-thru entity defined.-

2 For purposes of this subsection, the term “pass-thru entity” means -

- 3 (A) a regulated investment company;
- 4 (B) a real estate investment trust;
- 5 (C) an S corporation;
- 6 (D) a partnership;
- 7 (E) an estate or trust;
- 8 (F) a common trust fund; and
- 9 (G) a qualified electing fund (as defined in section 1295).

10 (11) Dividends taxed as net capital gain

11 (A) In general.- For purposes of this subsection, the term “net capital gain” means
12 net capital gain (determined without regard to this paragraph) increased by qualified
13 dividend income.

14 (B) Qualified dividend income.- For purposes of this paragraph -

15 (i) In general The term “qualified dividend income” means dividends received
16 during the taxable year from -

- 17 (I) domestic corporations, and
- 18 (II) qualified foreign corporations.

19 (ii) Certain dividends excluded Such term shall not include -

20 (I) any dividend from a corporation which for the taxable year of the corporation
21 in which the distribution is made, or the preceding taxable year, is a corporation exempt
22 from tax under section 501 or 521,

23 (II) any amount allowed as a deduction under section 591 (relating to deduction
24 for dividends paid by mutual savings banks, etc.), and

25 (III) any dividend described in section 404 (k).

26 (iii) Coordination with section 246 (c) Such term shall not include any dividend
27 on any share of stock -

28 (I) with respect to which the holding period requirements of section 246 (c) are
not met (determined by substituting in section 246 (c) “60 days” for “45 days” each
place it appears and by substituting “121-day period” for “91-day period”), or

(II) to the extent that the taxpayer is under an obligation (whether pursuant to a
short sale or otherwise) to make related payments with respect to positions in
substantially similar or related property.

(C) Qualified foreign corporations.-

(i) In general Except as otherwise provided in this paragraph, the term “qualified
foreign corporation” means any foreign corporation if -

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty
with the United States which the Secretary determines is satisfactory for purposes of
this paragraph and which includes an exchange of information program.

(ii) Dividends on stock readily tradable on United States securities market A
foreign corporation not otherwise treated as a qualified foreign corporation under clause
(i) shall be so treated with respect to any dividend paid by such corporation if the stock
with respect to which such dividend is paid is readily tradable on an established
securities market in the United States.

1 (iii) Exclusion of dividends of certain foreign corporations Such term shall not
2 include any foreign corporation which for the taxable year of the corporation in which
3 the dividend was paid, or the preceding taxable year, is a passive foreign investment
4 company (as defined in section 1297).

(iv) Coordination with foreign tax credit limitation Rules similar to the rules of
5 section 904 (b)(2)(B) shall apply with respect to the dividend rate differential under this
6 paragraph.

(D) Special rules

(i) Amounts taken into account as investment income Qualified dividend income
7 shall not include any amount which the taxpayer takes into account as investment
8 income under section 163 (d)(4)(B).

(ii) Extraordinary dividends If a taxpayer to whom this section applies receives,
9 with respect to any share of stock, qualified dividend income from 1 or more dividends
10 which are extraordinary dividends (within the meaning of section 1059 (c)), any loss on
11 the sale or exchange of such share shall, to the extent of such dividends, be treated as
12 long-term capital loss.

(iii) Treatment of dividends from regulated investment companies and real estate
13 investment trusts A dividend received from a regulated investment company or a real
14 estate investment trust shall be subject to the limitations prescribed in sections 854 and
15 857.

(i) Rate reductions after 2000

(1) 10-percent rate bracket

(A) In general.- In the case of taxable years beginning after December 31, 2000 -

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not
16 over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial
17 bracket amount but not over the maximum dollar amount for the 15-percent rate
18 bracket.

(B) Initial bracket amount.- For purposes of this paragraph, the initial bracket
19 amount is -

(i) \$14,000 in the case of subsection (a),

(ii) \$10,000 in the case of subsection (b), and

(iii) 1/2 the amount applicable under clause (i) (after adjustment, if any, under
20 subparagraph (C)) in the case of subsections (c) and (d).

(C) Inflation adjustment.- In prescribing the tables under subsection (f) which
21 apply with respect to taxable years beginning in calendar years after 2003 -

(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by
22 substituting "2002" for "1992" in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in
23 subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50,
24 such amount shall be rounded to the next lowest multiple of \$50.

(2) 25-, 28-, and 33-percent rate brackets

The tables under subsections (a), (b), (c), (d), and (e) shall be applied -

(A) by substituting "25%" for "28%" each place it appears (before the application
25 of subparagraph (B)),
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(B) by substituting "28%" for "31%" each place it appears, and
(C) by substituting "33%" for "36%" each place it appears.

(3) Modifications to income tax brackets for high-income taxpayers

(A) 35-percent rate bracket.- In the case of taxable years beginning after December 31, 2012 -

(i) the rate of tax under subsections (a), (b), (c), and (d) on a taxpayer's taxable income in the highest rate bracket shall be 35 percent to the extent such income does not exceed an amount equal to the excess of -

- (I) the applicable threshold, over
- (II) the dollar amount at which such bracket begins, and

(ii) the 39.6 percent rate of tax under such subsections shall apply only to the taxpayer's taxable income in such bracket in excess of the amount to which clause (i) applies.

(B) Applicable threshold.- For purposes of this paragraph, the term "applicable threshold" means -

- (i) \$450,000 in the case of subsection (a),
- (ii) \$425,000 in the case of subsection (b),
- (iii) \$400,000 in the case of subsection (c), and
- (iv) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsection (d).

(C) Inflation adjustment.- For purposes of this paragraph, with respect to taxable years beginning in calendar years after 2013, each of the dollar amounts under clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted in the same manner as under paragraph (1)(C)(i), except that subsection (f)(3)(B) shall be applied by substituting "2012" for "1992".

(4) Adjustment of tables.- The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

§ 61(a) 8

§ 61 Gross Income Defined.

(a) General Definition.-Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items;

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;

§ 61(b) 8

§ 61(b) Cross references.- For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

1 § 83 *passim*

2 § 83 “Property Transferred in Connection with the Performance of Services.

3 (a) If, in connection with the performance of services, property is transferred...,

4 the excess of -

5 (1) the fair market value of such property...over,

6 (2) the amount (if any) paid for such property . . . shall be included in the

7 gross income of the person who performed such services[.]”

8 § 212 10, 19, 27, 28

9 § 212 Expenses for Production of Income.

10 In the case of an individual, there shall be allowed as a deduction all the

11 ordinary and necessary expenses paid or incurred during the taxable year-

12 (1) for the production or collection of income;

13 § 879(a)(2) 4

14 § 879 Tax Treatment of Certain Community Income in the Case of Nonresident Alien

15 Individuals. (a) General rule.-In the case of a married couple 1 or both of whom are

16 nonresident alien individuals..., such community income shall be treated as follows: (2)

17 Trade or business income..., shall be treated as provided in section 1402(a)(5).

18 § 1001 10, 19, 28

19 § 1001(a) Computation of Gain or Loss.-The gain from the sale or other disposition of

20 property shall be the excess of the amount realized therefrom over the adjusted basis

21 provided in section 1011...

22 § 1011 10, 19, 28

23 § 1011(a) General rule.-The adjusted basis for determining the gain or loss from the sale

24 or other disposition of property, whenever acquired, shall be the basis (determined

25 under section 1012...)...

26 § 1012 17, 19, 28

27 § 1012 Basis of Property-Cost. “The basis of property shall be the cost of such

28 property...”

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1 § 1401 5

2 § 1401 - Rate of tax.-

3 (a) Old-age, survivors, and disability insurance

4 In addition to other taxes, there shall be imposed for each taxable year, on the self-

5 employment income of every individual, a tax equal to 12.4 percent of the amount of

6 the self-employment income for such taxable year.

7 (b) Hospital insurance.

8 (1) In general.- In addition to the tax imposed by the preceding subsection, there

9 shall be imposed for each taxable year, on the self-employment income of every

10 individual, a tax equal to 2.9 percent of the amount of the self-employment income for

11 such taxable year.

12 (2) Additional tax.-

13 (A) In general In addition to the tax imposed by paragraph (1) and the preceding

14 subsection, there is hereby imposed on every taxpayer (other than a corporation, estate,

15 or trust) for each taxable year beginning after December 31, 2012, a tax equal to 0.9

16 percent of the self-employment income for such taxable year which is in excess of -

17 (i) in the case of a joint return, \$250,000,

18 (ii) in the case of a married taxpayer (as defined in section 7703) filing a

19 separate return, ½ of the dollar amount determined under clause (i), and

20 (iii) in any other case, \$200,000.

21 § 1402 3, 4, 5

22 § 1402(b) . . . An individual who is not a citizen of the United States but who is a

23 resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American

24 Samoa shall not, for the purposes of this chapter be considered to be a nonresident alien

25 individual.

26 § 3121 3, 5

27 § 3121(e) An individual who is a citizen of the Commonwealth of Puerto Rico (but not

28 otherwise a citizen of the United States) shall be considered . . . as a citizen of the

United States.

§ 3306 5

§ 3306(j) An individual who is a citizen of the Commonwealth of Puerto Rico or the

Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for

purposes of this section, as a citizen of the United States.

§ 6001 20

§ 6001 Notice or regulations requiring records, statements, and special returns.-

Every person liable for any tax imposed by this title, or for the collection thereof, shall

keep such records, render such statements, make such returns, and comply with such

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rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

§ 6011 20

§ 6011 - General requirement of return, statement, or list.-

(a) General rule.- When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 6012 20

§ 6012 Persons required to make returns of income.-

(a) General rule.- Returns with respect to income taxes under subtitle A shall be made by the following:

(1) (A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual -

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

§ 7201 22

§ 7201 Attempt to evade or defeat tax.- Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 7345 25

§ 7345 - Revocation or denial of passport in case of certain tax delinquencies.-

(a) In general.- If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt, the Secretary shall transmit such certification to the Secretary of State for action with respect to

1 denial, revocation, or limitation of a passport pursuant to section 32101 of the FAST Act.

2 (b) Seriously delinquent tax debt.-

3 (1) In general.- For purposes of this section, the term “seriously delinquent tax debt” means an unpaid, legally enforceable Federal tax liability of an individual -

4 (A) which has been assessed,

5 (B) which is greater than \$50,000, and

6 (C) with respect to which -

7 (i) a notice of lien has been filed pursuant to section 6323 and the administrative rights under section 6320 with respect to such filing have been exhausted or have lapsed, or

8 (ii) a levy is made pursuant to section 6331.

9 (2) [omitted]

10 § 7651 4

11 § 7651(4) Virgin Islands.-

12 (A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to “any tax specified in section 3811 of the Internal Revenue Code” shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

14 § 7655 4

15 § 7655 Cross references.-

16 (a) Imposition of tax in possessions.- For provisions imposing tax in possessions, see -

17 (1) Chapter 2, relating to self-employment tax;

18 (2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act.

19 § 7801 5

20 § 7801 - Authority of Department of the Treasury.-

21 (a) Powers and duties of Secretary.-

22 (1) In general.- Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

23 (2) Administration and enforcement of certain provisions by Attorney General.-

24 (A) In general.- The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term “Secretary” or “Secretary of the Treasury” shall, when applied to those provisions, mean the Attorney General; and the term “internal revenue officer” shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

25 (i) Chapter 53.

1 **26 CFR:**

2 1.1-1 *passim*

3 26 CFR 1.1-1 Income tax on individuals.

4 (a) General rule.

5 (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States.

6 (b) Citizens of the United States or residents liable to tax. In general, all citizens of the United States, wherever resident, and all resident alien individual are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.

7

8 (c) Who is a citizen. Every person born or naturalized in the United States and subject to its jurisdiction is a citizen.

9

10 1.83-3(g) *passim*

11 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term "amount paid" refers to the value of any money or property paid for the transfer of property to which § 83 applies.

12

13 1.83-4(b)(2) 12, 17, 19

14 26 CFR 1.83-4(b)(2) If property to which 1.83-1 applies is transferred at an arm's length, the basis of the property in the hands of the transferee shall be determined under section 1012 and the regulations thereunder.

15

16

17 1.1001-1(a) 13, 22

18 26 CFR 1.1001-1 Computation of gain or loss.

19 (a) General rule. Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001 (a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (i.e., the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain.

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1	1.1011-1	13
2	26 CFR 1.1011-1 Adjusted basis.-The adjusted basis... is the cost or other basis	
3	prescribed in section 1012[.]”	
4	1.1012-1(a)	<i>passim</i>
5	26 CFR 1.1012-1(a) “ . . . The cost is the amount paid for such property in cash or other	
6	property.”	
7	1.1402(b)-1(d)	3
8	26 CFR 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has	
9	self-employment income. While a nonresident alien individual who derives income	
10	from a trade or business carried on within the United States, Puerto Rico, the Virgin	
11	Islands, Guam, or American Samoa... may be subject to the applicable income tax	
12	provisions on such income, such nonresident alien individual will not be subject to the	
13	tax on self-employment income, since any net earnings which he may have...do not	
14	constitute self-employment income. For the purposes of the tax on self-employment	
15	income, an individual who is not a citizen of the United States but who is a resident of	
16	the Commonwealth of Puerto Rico, the Virgin Islands, or . . . of Guam or American	
17	Samoa is not considered to be a nonresident alien individual.	
18	31.0 and 31.3121(e)-1(b)	4
19	26 CFR 31.0-2(a)(1) The terms defined in the provisions of law contained in the	
20	regulations in this part shall have the meaning so assigned to them.	
21	26 CFR 31.3121(e)-1(b) ...The term “citizen of the United States” includes a citizen of	
22	the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961,	
23	a citizen of Guam or American Samoa.	
24	42 USC:	
25	42 USC § 411(b)(2)	4, 5
26	42 USC § 411(b)(2) The net earnings from self-employment, if such net earnings for the	
27	taxable year are less than \$400. An individual who is not a citizen of the United States	
28	but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam,	
	or American Samoa shall not, for the purpose of this subsection, be considered to be a	
	nonresident alien individual. In the case of church employee income, the special rules	
	of subsection (i)(2) of this section shall apply for purposes of paragraph (2).	
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Public Law:

Social Security Act § 211 (Pub.L. 74-271, 49 Stat. 620, enacted August 14, 1935) 4, 5

Social Security Act of 1935 § 211.- An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) shall apply for purposes of paragraph (2).

US Constitution:

5th Amdt. 28

5th Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

16th Amdt. 6, 19

16th Amendment: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

**End introductory tables.*

BRIEF OF THE ISSUES

1
2
3 1. United States Tax Court will penalize all who seek to apply governing provisions to
4 their compensation for personal services, or who make a statutory claim that seeks to change or
5 constrain the Appellee in any way. The ruling below very plainly defines the term “tax
6 protester” as anyone who argues statute against the IRS. (See **Ex.D** hereto at its fn.6, calling a
7 web site with purely legal arguments a “tax protester” web site). Despite the confrontational
8 tone of Appellant’s petition (**Ex.B** hereto), Tax Court did not step forward to deny that the law
9 is off limits under threat of enormous monetary sanctions, but it crumbles under the weight of
10 this:

11 “How did those provisions on that site operate in your conclusion that 26 CFR 1.1 does
12 not deviate from § 1? How did § 83 operate in your conclusion that an American owes
13 an income tax on his or her paycheck?”

14 2. Tax Court refuses to speak of these controlling provisions (and others) and will
15 handily bury all litigants who dare to do so, *a fortiori*, a “tax protester” is anyone who uses the
16 law to challenge the IRS. Exhibits appended hereto (Appendix A) are from the record in the
17 court below:

18 **Ex.A:** Notices of Deficiency for 2012 and for 2013 both issued on May 16, 2016.

19 **Ex.B:** Appellant’s US Tax Court petition w/o exhibits.

20 **Ex.C:** Appellee’s US Tax Court reply to Appellant’s petition.

21 **Ex.D:** US Tax Court’s final order.

22 **Ex.E:** 1993 through 2016 editions of IRS Publication 17 stating that Appellant’s *cost*
23 includes his personal “services” or “other property.”

24 3. In this case Tax Court did nothing to change the course on this policy of penalizing
25 statutory arguments.

Tax Court docket number:

26 #11315-94 Chris Bernsdorff was penalized \$1000.00 for asking Tax Court to indulge
27 issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

1 #15685-94 Susan Eckles was penalized \$3000.00 for asking Tax Court to indulge issues
2 concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

3 #3176-95 Robert and Mauris Justice were penalized \$3750.00 for asking Tax Court to
4 indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

5 #1610-95 Richard and Pamela Bryan were threatened with penalties for asking Tax
6 Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

7 #8766-95 William Santangelo was penalized for asking Tax Court to indulge issues
8 concerning applicable provisions, *e.g.*, 26 USC § 83 and others. (See Memorandum
9 Opinion, filed Oct.2, 1995, pg.13, \$2,500.00).

10 #339-95 Stephen Talmage was penalized \$6500.00 for offering to concede all facts in
11 exchange for “how to comply with § 83”. (See Order and Decision, 3/11/96, pg.8, 19,
12 20).

13 *Santangelo*, 9th Cir.App.#95-70866, and *Bryan*, 9th Cir.App. #95-70800, \$2000.00
14 additional penalty each.¹

15 4. Indeed, Tax Court proclaimed its *judicial holiday* in perpetuity in very plain language
16 when it announced that asking it to deal with issues of law justifies penalties for frivolity.

17 “...The logical force requiring rejection of their arguments-apart from their *assertions*
18 *of personal political philosophy which do not provide a basis for us, a Court sitting to*
19 *interpret the law*, to decide the questions dispositive of this case...”

20 See *Rowlee v. C.I.R.*, 80 USTC 1111, 1120 (1983), quoting *Reading v. C.I.R.*, 70 TC 730
21 (1978), *aff’d*. 614 F.2d 159 (CA8 1980, at 173). *Compare*:

22 “... *the pleadings do not raise a genuine issue of material fact* respecting Respondent’s
23 determinations . . . *but rather involve only issues of law*. (Cite omitted) Therefore
24 Respondent’s motion for judgment on the pleadings will be granted. . . . *The final*
25 *matter we consider is [penalties].”*

26 See *Abrams v. C.I.R.*, 82 USTC 403, 408 (1984).

27 5. This Court will see that these issues are well founded and ripe for adjudication, that
28 they have festered without resolution for many years, and that they have plagued the
relationship between the American People and their federal government for decades. The courts

¹ Appellant “listed” this case as an example of Tax Court’s abuses, not as an authority as the court below would have one believe. (See **Ex.D** hereto, final Order at fn.6).

1 and the People have toiled under the complexities of 26 USC since 1954, costing them all vast
2 amounts of precious resources better spent on other pursuits.

3 6. None of these claims are on the IRS' "frivolous arguments list" despite its having
4 been faced with Appellant's key claims for over twenty-two years. All statutes referenced shall
5 be deemed to be in 26 USC unless otherwise specified. *Any and emphasis employed* herein
6 may be construed to have been added.

7 **Issue A: Statutory constraints limit the scope of 26 USC ch.2 making it inapplicable to**
8 **citizens of the United States.**

9 7. Social Security is imposed by 26 USC ch.2 and ch.21. The Appellee alleges a
10 liability under 26 USC ch.2 (Social Security self employed) while it deems the Appellant to be
11 a "citizen of the United States." It is clear that such citizens are excluded from the purview of
12 26 USC ch.2.

13 8. In the Tax Code, Congress has indeed named a subject of the tax or procedure in
14 other commonly applied portions of the Tax Code's statutory scheme, such as in its chapter
15 two:

16 § 1402(b) . . . *An individual who is not a citizen of the United States but who is a*
17 *resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American*
18 *Samoa shall not, for the purposes of this chapter be considered to be a nonresident*
19 *alien individual.*

20 26 CFR 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has
21 self-employment income. While *a nonresident alien individual* who derives income
22 from a trade or business carried on within the United States, Puerto Rico, the Virgin
23 Islands, Guam, or American Samoa... *may be subject to the applicable income tax*
24 *provisions* on such income, such nonresident alien individual *will not be subject to the*
25 *tax on self-employment income*, since any net earnings which he may have...do not
26 constitute self-employment income. *For the purposes of the tax on self-employment*
27 *income, an individual who is not a citizen of the United States but who is a resident of*
28 *the Commonwealth of Puerto Rico, the Virgin Islands, or . . . of Guam or American*
Samoa is not considered to be a nonresident alien individual.

And in Tax Code chapter 21, Congress named a subject:

§ 3121(e) An individual who is *a citizen of the Commonwealth of Puerto Rico* (but not
otherwise a citizen of the United States) *shall be considered . . . as a citizen* of the
United States.

1 26 CFR 31.0-2(a)(1) The terms defined in the provisions of law contained in the
2 regulations in this part shall have the meaning so assigned to them.

3 26 CFR 31.3121(e)-1(b) ...The term "citizen of the United States" *includes* a citizen of
4 the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961,
a citizen of Guam or American Samoa.

5 § 7655 Cross references.-

6 (a) Imposition of tax in possessions.- For provisions imposing tax in
possessions, see -

7 (1) Chapter 2, relating to self-employment tax;

8 (2) Chapter 21, relating to the tax under the Federal Insurance Contributions
Act.

9 And in Social Security administration legislation Congress named a beneficiary:

10 42 USC § 411(b)(2) The net earnings from self-employment, if such net earnings for the
11 taxable year are less than \$400. *An individual who is not a citizen of the United States*
12 *but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam,*
13 *or American Samoa shall not, for the purpose of this subsection, be considered to be a*
14 *nonresident alien individual.* In the case of church employee income, the special rules
of subsection (i)(2) of this section shall apply for purposes of paragraph (2).²

15 9. Congress says that nonresident aliens to the Complainant are to go to chapter 2 for
16 self employment earnings (See 26 U.S.C. 879(a)(2)³); it's a tax for non-U.S. citizens. Congress
17 says that Social Security under chapters 2 and 21 are the same tax imposed by 1939 Tax Code §
18 3811.

19 § 7651(4) Virgin Islands.-

20 (A) For purposes of this section, the reference in section 28(a) of the Revised
21 Organic Act of the Virgin Islands to "any *tax specified in section 3811* of the Internal
Revenue Code" shall be *deemed to refer to any tax imposed by chapter 2 or by chapter*
22 *21.*

23 1939 Tax Code § 3811 Collection of Taxes in Puerto Rico and Virgin Islands.

24 (a) Puerto Rico.

25 ² From § 211 of The Social Security Act (Pub.L. 74-271, 49 Stat. 620, enacted August 14,
26 1935).

27 ³ See 26 USC § 879 Tax Treatment of Certain Community Income in the Case of Nonresident
28 Alien Individuals. (a) General rule.-In the case of a married couple 1 or both of whom are
nonresident alien individuals..., such community income shall be treated as follows: (2) Trade
or business income..., shall be treated as provided in section 1402(a)(5).

1 (b) Virgin Islands.⁴

2 10. There's an abundance of evidence that Appellant cannot be both citizens, the citizen
3 of the United States in chapter one and the citizen liable for Social Security. Complainant must
4 meet the statutory definition of "citizen" in 26 USC chapters 2 and 21 to be liable for Social
5 Security.

6 ". . . Thus, Congress did not reach every transaction in which an investor actually relies
7 on inside information. A person avoids liability if he does not meet the statutory
8 definition of an "insider[.]"⁵

9 "It is axiomatic that the statutory definition of the term excludes unstated meanings of
10 that term,"⁶ "[h]owever severe the consequences."⁷

11 11. In the Tax Code, Congress has indeed named a subject of the tax in 26 USC ch.2
12 and has chosen to exclude the citizenship Appellee says the Appellant [enjoys]. All portions of
13 the alleged deficiency purportedly imposed under § 1401 should therefore be invalidated.

14 **Issue B: As [if] a citizen of the United States, the Appellant is named solely through the**
15 **promulgation of Treasury Regulations as a subject of the tax now at issue, in violation of**
16 **the 16th Amdt. which authorizes only Congress to lay and collect income taxes. Treasury**
17 **Regulation 26 CFR 1.1-1 is void as derogation or vitiation of, or deviation from, statute 26**
18 **USC § 1. Without 26 CFR 1.1-1 there is no authority which subjects a "citizens of the**
19 **United States" to the tax imposed by 26 USC § 1. The "deficiency" alleged by Appellee is**
20 **therefore invalid.**

21 12. The Appellee also alleges a liability under 26 USC ch.1 where § 1 imposes the
22 graduated income tax on "taxable income." Unlike chapters examined above, ch.1 has no
23 statutory definition of "citizen" to identify the subject of the tax in § 1, which makes no
24 mention whatsoever of anyone's citizenship.

25 13. Nowhere in 26 USC § 1 is there any reference whatsoever to any citizenship as is
26 found in other chapters of the Internal Revenue Code and relevant statutes elsewhere, such as at
27 26 USC §§ 1402(b), 3121(e), 3306(j), 42 USC § 411(b)(2), and in § 211 of The Social Security
28 Act (Pub.L. 74-271, 49 Stat. 620, enacted August 14, 1935, now codified as 42 USC ch.7). In

⁴ Clearly, 1939 Tax Code § 3811 was merely split into chapters 2 and 21 of the 1954 Tax Code.

⁵ See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 US 418, 422 (1972).

⁶ See *Meese v. Keene*, 481 US 465, 484 (1987).

1 those statutes Congress thought it necessary to expressly exclude by reference “citizens of the
2 United States.” Congress is acutely aware of such citizens and chose to not identify them as a
3 subject of any 26 USC income tax.

4 14. The executive (Secretary of the Treasury, see 26 USC §§ 7801, 7805) saw this, and
5 sensed the dilemma it creates were any attempt ever made to apply the Title to Americans
6 (“citizens of the United States”), so a regulation was written to implement 26 USC § 1 and to
7 identify a subject of the tax imposed thereunder:

8 26 CFR 1.1-1 Income tax on individuals.

9 (a) General rule.

10 (1) ***Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States.***

11 (b) Citizens of the United States or residents liable to tax. In 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.

12 (c) Who is a citizen. ***Every person born or naturalized in the United States and subject to its jurisdiction is a citizen.***⁸

13
14 “Vallone wrote a letter to the IRS in which he made a variety of baseless claims,
15 including the assertions that he enjoyed certain rights unique to a “sovereign citizen”
16 born in the United States; that he was neither a citizen nor resident of the United States
17 as those terms are used in the Fourteenth Amendment or ***26 CFR § 1.1-1(a)-(c), the IRS regulation identifying those persons who are subject*** to income tax by the United
18 States[.]”

19 See *US v. Vallone*, 110 A.F.T.R.2d (RIA) 6110 (CA7 2012).

20 15. Problem solved. However, this stunning remark and holding of this Court (above) is
21 directly at the core of this claim and is stated wholly in support of Appellant’s claim about 26
22 CFR 1.1-1.

23 “Where Congress includes particular language in one section of a statute but omits it in
24 another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”

25 See *Russello v. United States*, 464 US 16, 23 (1983).

26
27 ⁷ See *Jay v. Boyd*, 351 US 345, 357 (1956).

28 ⁸ See T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974; T.D. 9391, 73 FR 19358, Apr. 9, 2008.

1 16. Nowhere has Congress supplied a statutory definition of the term “citizen” which
2 identifies the Appellant as the subject of the § 1 income tax, so the Appellee wrote and
3 promulgated 26 CFR 1.1-1 to do so; that is impermissible as a violation of the 16th Amdt., *to*
4 *wit*:

5 U.S. Constitution, Amdt. 16, February 25, 1913. “The Congress shall have power to lay
6 and collect taxes on incomes, from whatever source derived, without apportionment
7 among the several States and without regard to any census or enumeration.”

8 17. Congress’ omission of such a statutory definition of “citizen” from 26 USC must be
9 viewed as an intentional withholding of statutory authority from the Internal Revenue Service
10 just as its lack of delegation to the FDA was deemed intentional, in *FDA v. Brown &*
11 *Williamson*, 153 F.3d 155, 160-167 (CA4 1998), *aff’d* 529 US 120 (2000), where the 4th Circuit
12 and the Supreme Court rendered very lengthy memorandum opinions in decisions that stripped
13 the FDA of tobacco enforcement authority, finding that it arose and was founded solely upon
14 regulations promulgated by executive officials. Appellant’s claim that Americans (“citizens of
15 the United States”) are implicated as subject to 26 USC by regulation alone is identical in
16 nature to the claims made against the FDA in that case.

16 “And “[i]n our anxiety to effectuate the congressional purpose of protecting the public,
17 we must take care not to extend the scope of the statute beyond the point *where*
18 *Congress indicated it would stop.*” *United States v. Article of Drug . . . Bacto-Unidisk*,
19 394 U.S. 784, 800 (1969) (quoting *62 Cases of Jam v. United States*, 340 U.S. 593, 600
20 (1951)).”

21 See *FDA v. Brown & Williamson, Id.* at 161.

22 “Finally, the Government points to the fact that the Treasury Regulations
23 relating to the statute purport to include the pick-up man among those subject to
24 the § 3290 tax, and argues (a) that this constitutes an administrative
25 interpretation to which we should give weight in construing the statute,
26 particularly because (b) section 3290 was carried over *in haec verba* into § 4411
27 of the Internal Revenue Code of 1954. We find neither argument persuasive. ***In***
28 ***light of the above discussion, we cannot but regard this Treasury Regulation***
as no more than an attempted addition to the statute of something which is not
there. As such the regulation can furnish no sustenance to the statute.
Koshland v. Helvering, 298 U.S. 441, 446-447. Nor is the Government helped
by its argument as to the 1954 Code. The regulation had been in effect for only
three years, and there is nothing to indicate that it was ever called to the
attention of Congress. The re-enactment of § 3290 in the 1954 Code was not

1 accompanied by any congressional discussion which throws light on its intended
2 scope. In such circumstances we consider the 1954 re-enactment to be without
3 significance. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431.”

4 See *United States v. Calamaro*, 354 US 351, 358-59, 77 S.Ct. 1138 (1957). See also, *Water*
5 *Quality Ass'n v. United States*, 795 F.2d 1303 (7th Cir. 1986), where, citing and quoting
6 *Calamaro*, the 7th Cir. added at p.1309:

7 “*It is a basic principle of statutory construction that courts have no right first to*
8 *determine the legislative intent of a statute and then, under the guise of its*
9 *interpretation, proceed to either add words to or eliminate other words from the*
10 *statute’s language. DeSoto Securities Co. v. Commissioner*, 235 F.2d 409, 411 (7th Cir.
11 1956); see also 2A Sutherland Statutory Construction § 47.38 (4th Ed. 1984). Similarly,
12 *the Secretary has no power to change the language of the revenue statutes because he*
13 *thinks Congress may have overlooked something.”*

14 “*But the section contains nothing to that effect, and, therefore, to uphold [IRS*
15 *Commr’s] addition to the tax would be to hold that it may be imposed by regulation,*
16 *which, of course, the law does not permit. U.S. v. Calamaro*, 354 US 351, 359;
17 *Koshland v. Helvering*, 298 US 441, 446-67; *Manhattan Equipment Co. v.*
18 *Commissioner*, 297 US 129, 134.”⁹

19 18. Appellant charges that 26 CFR 1.1-1 is invalid for the fact that it impermissibly
20 “add[s] to the statute of something which is not there.” (See *US v. Calamaro, supra*, p.358-59).
21 Had this impermissible and unconstitutional (Amdt. 16) promulgation not occurred, the law is
22 void of any reference to citizens of the United States as the subject of the income tax imposed
23 at § 1; a regulation identifies the subject of the tax. (*Vallone, supra*). Inasmuch as the subject
24 ch.1 deficiency arises out of purely regulatory authority, it must be declared invalid.

25 **Issue C: Appellee is in violation of 26 USC § 83(a) in its determination of the subject**
26 **deficiency. Appellant has been deprived of the provisions of 26 USC §§ 83, 212, 1001,**
27 **1011, and 1012, as it relates to ch.1 and ch.2 income taxes now sought. In doing so**
28 **Appellee is in violation of the 16th Amendment to the US Constitution.**

19. While it is universally held that 26 USC § 83(a) (not § 61(a)) explains how to tax all
compensation paid for personal services actually performed, Tax Court and other courts have
imposed severe sanctions on anyone who dares to seek review of it language and that of its

⁹ See *C.I.R. v. Acker*, 361 US 87, 92 (1959).

1 implementing regulations in relation to standard compensation such as fees, commissions, tips,
2 salaries, wages, self employment earnings, and the like.

3 26 USC § 61(b) Cross references.- For items specifically included in gross income, see
4 part II (sec. 71 and following). For items specifically excluded from gross income, see
5 part III (sec. 101 and following).

6 IRS' Office of Associate Chief Counsel (Procedure & Administration), Administrative
7 Provisions and Judicial Practice Division, Revenue Ruling 2007-19: "**Section 83**
8 **provides for the determination of the amount to be included in gross income** and the
9 timing of the inclusion **when property is transferred to an employee or independent**
10 **contractor in connection with the performance of services.**"

11 *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979): "Petitioners rest their entire case on the
12 proposition that Elovich and Cohn and/or Mega were "independent contractors" and not
13 employees of the Integrated and that, therefore, section 83 does not apply to the
14 acquisition of the shares from Integrated. They rely on the legislative history
15 surrounding the statute to support their proposition that section 83 was intended to
16 apply only to restricted stock transferred to employees. **Respondent contends that the**
17 **words "any person" in section 83(a) encompass independent contractors as well as**
18 **employees. We agree with Respondent.** . . . We reject petitioner's argument. While
19 restricted stock plans involving employers and employees may have been the primary
20 impetus behind the enactment of section 83, **the language of the section covers the**
21 **transfer of any property transferred in connection with the performance of services**
22 **"to any person other than the person for whom the services are performed."** (Emphasis
23 added.) The legislative history makes clear that **Congress was aware that the statute's**
24 **coverage extended beyond restricted stock plans for employees.** H.Rept. 91-413 (Part
25 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. **The**
26 **regulations state that that section 83 applies to employees and independent**
27 **contractors** (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the
28 foregoing circumstances, **these regulations are not "unreasonably and plainly**
inconsistent with the revenue statutes." **Consequently, they are sustained.** (cites
omitted)"

29 *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984): "The plain language of section 83(a)
30 belies *Alve's* argument. **Section 83(a) applies to all property transferred in connection**
31 **with the performance of services.** No reference is made to the term "compensation."
32 Nor is there any statutory requirement that property have a fair market value in excess
33 of the amount paid at the time of transfer. Indeed, **if Congress had intended section**
34 **83(a) to apply solely to restricted stock used to compensate its employees, it could**
35 **have used much narrower language.** Indeed, Congress made section 83(a) applicable
36 to all restricted "property," not just stock; to property transferred to "any person," not
37 just to employees; and **to property transferred "in connection with . . . services," not**
38 **just compensation for employment.** See *Cohn v. Commissioner*, 73 USTC 443, 446-47
(1979)."

1 Concurring with *Cohn, Alves*, see *Centel Communications Co. v. CIR*, 920 F.2d 1335,
2 1342 (CA7 1990).

3 *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992): “Section
4 83(a) explains how property received in exchange for services is taxed.”

5 *Gudmundsson v. US*, 634 F.3d 212 (CA2 2011): “At the heart of this case is I.R.C. § 83,
6 which **governs the taxation of property transferred** in connection with the performance
7 of services.”

8 20. In only one instance has there been precise reasoning offered as justification for the
9 imposition of penalties for *frivolity* (26 USC § 6673), in *Talmage v. Comm’r of IRS*, USTC
10 docket #339-95, 71 T.C.M. 2370 (1996):

11 “Because the issues are purely legal, this case is ripe for summary judgment. Tax
12 protester arguments like the claim that wages are not taxable income also suffice (as an
13 alternative to dismissal, and in the absence of better argument) to justify summary
14 judgment for the respondent. (protester cite omitted). Even if wages are, in effect, an
15 exchange of value for equal value, they are nevertheless taxable income. (protester cite
16 omitted) And even if we apply section 1001, his basis is determined under sections 1011
17 and 1012 as his cost, not fair market value. **Since he paid nothing for his labor, his cost
18 and thus his basis are zero.** (protester cite omitted) Consequently, even under section
19 1001, his taxable income from his labor is his total gain reduced by nothing, *i.e.*, his
20 wages.

21 Petitioner’s primary argument is that section 83, Property Transferred in Connection
22 with the Performance of Services, has the effect of exempting his wages from income tax
23 because it requires us to apply section 1012, which specifies that cost should be used to
24 determine the basis of property (unless the Code provides otherwise) to determine the
25 extent to which wages constitute taxable income. Petitioner asserts that he “paid” for his
26 wages with his labor and that section 83 allows the value of his labor as a cost to be offset
27 against his wages, thereby exempting them from tax. Section 83 provides that property
28 received for services is taxable to the recipient of the property to the extent of its fair
market value minus the amount (if any) paid for the property. **In attempting to equate his
wages with property for which he has a tax cost, petitioner’s argument is nothing more
than a variation of the wages-are-not-income claim frequently advanced by tax protesters,
and it is completely without merit.** (protester cites omitted) Petitioner’s argument fails for
the same reason that other protester’s arguments fail; ***the worker’s cost for his services-
and thus his basis-is zero, not their fair market value.***”

*End quote from *Talmage* in US Tax Court. The appeal:

“Stephen V. Talmage appeals from the tax court’s orders (1) entered March 11, 1996,
granting summary judgment to the Commissioner and imposing a penalty under 26
U.S.C. § 6673(a)(1)(B) (1994) for pursuing a frivolous action in tax court; and, (2)

1 entered April 17, 1996, denying his motion for reconsideration. *We affirm, based on*
2 *the reasoning of the tax court.*”

3 See *Talmage v. Comm’r of IRS*, 101 F.3d 695 (CA4 Nov. 15, 1996) (unpublished decision).

4 21. In US Tax Court below the Appellant quoted *Talmage v. Comm’r of IRS*, wherein
5 the IRS’ reasoning in disagreement with claims regarding how to calculate the “amount paid”
6 under 26 USC § 83(a) is articulated. (See **Ex.B** at its ¶1.13).

7 ***Begin quote of petition below:**

8 “1.13 In *Talmage v. Comm’r of IRS*, USTC docket #339-95, 71 T.C.M. 2370
9 (1996), this was the answer to the claim that the IRS had deprived Mr. Talmage of the
10 provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012:

11 “Because the issues are purely legal, this case is ripe for summary judgment.
12 *Tax protester arguments like the claim that wages are not taxable income also*
13 *suffice* (as an alternative to dismissal, and in the absence of better argument) *to*
14 *justify summary judgment for the respondent.* (protester cite omitted). *Even if*
15 *wages are, in effect, an exchange of value for equal value, they are nevertheless*
16 *taxable income.* (protester cite omitted) And even if we apply section 1001, his
17 basis is determined under sections 1011 and 1012 as his cost, not fair market value.
18 *Since he paid nothing for his labor, his cost and thus his basis are zero.* (protester
19 cite omitted) Consequently, even under section 1001, his taxable income from his
20 labor is his total gain reduced by nothing, *i.e.*, his wages.

21 “Petitioner’s primary argument is that section 83, Property Transferred in
22 Connection with the Performance of Services, has the effect of *exempting* his
23 wages from income tax because it requires us to apply section 1012, which
24 specifies that cost should be used to determine the basis of property (unless the
25 Code provides otherwise) to determine the extent to which wages constitute taxable
26 income. Petitioner asserts that he “paid” for his wages with his labor and that
27 section 83 allows the value of his labor as a cost to be offset against his wages,
28 thereby exempting them from tax. Section 83 provides that property received for
services is taxable to the recipient of the property to the extent of its fair market
value minus the amount (if any) paid for the property. *In attempting to equate his*
wages with property for which he has a tax cost, petitioner’s argument is nothing
more than a variation of the wages-are-not-income claim frequently advanced by
tax protesters, and it is completely without merit. (protester cites omitted)
Petitioner’s argument fails for the same reason that other protester’s arguments fail;
the worker’s cost for his services-and thus his basis-is zero, not their fair market
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*End quote from *Talmage* in US Tax Court. The appeal:

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2 1996, granting summary judgment to the Commissioner and imposing a penalty
3 under 26 U.S.C. § 6673(a)(1)(B) (1994) for pursuing a frivolous action in tax court;
4 and, (2) entered April 17, 1996, denying his motion for reconsideration. *We affirm,
5 based on the reasoning of the tax court.*”

6 See *Talmage v. Comm’r of IRS*, 101 F.3d 695 (CA4 Nov. 15, 1996) (unpublished
7 decision).”

8 *End quote of petition.

9 22. The Appellee filed an answer to the petition (See **Ex.C** at its pp.7-8) which clearly
10 concurred with the *Talmage* appellate and Tax Court decisions and reasoning:

11 “Paragraph 1.13 beginning on page 11 of the attachment entitled petition for
12 redetermination: The allegations are argumentative in nature rather than statements of
13 fact pertaining to this petitioner’s income and deficiencies, and do not require admission
14 or denial in accordance with Tax Court Rule 36. To the extent any of said allegations
15 are deemed to be statements of material fact, admits the compensation paid to
16 petitioner, whether paid in the form of cash or property, is includible in gross income
17 and taxable, and that his basis in his own labor for which he earned compensation is
18 zero as stated in the opinion of the Court cited by the petitioner.”

19 23. This makes clear that for only one reason, property within which one has no basis is
20 excluded from consideration as a cost paid (“amount (if any) paid” 26 USC § 83(a)) by the
21 individual or corporation (“person”) who performed the services at issue.

22 § 83 “Property Transferred in Connection with the Performance of Services.

23 (a) If, in connection with the performance of services, property is transferred...,
24 *the excess of -*

25 (1) *the fair market value of such property...over,*

26 (2) *the amount (if any) paid for such property . . . shall be included in the
27 gross income of the person who performed such services[.]”*

28 “We shall begin our analysis with an exegesis of the general provisions of
section 83. We then shall examine those provisions in conjunction with the facts of the
instant case so that we may decide whether respondent adequately notified petitioner of
the issue of the applicability of section 83. Section 83(a) generally provides that where
property is transferred in connection with the performance of past, present, or future
services, the excess of the fair market value of the property over the amount paid for
the property is includable as compensation in the gross income of the taxpayer who
performed the services. *Bagley v. Commissioner*, 85 T.C. 663, 669 (1985), affd. *per
curiam* 806 F.2d 169 (8th Cir. 1986). *Section 83 does not apply only to employees of
the transferor of the property; rather, it is applicable to any person other than the one*

1 *for whom the services were performed, including independent contractors of the*
2 *transferor. Cohn v. Commissioner, 73 T.C. 443, 446 (1979). (footnote omitted). Thus,*
3 *even though petitioner's relationship to Immuno was that of an independent contractor*
4 *rather than an employee, section 83 may apply to the receipt or disposition of the*
5 *warrant by petitioner if the other requirements of that section are met."*

6 See *Pagel, Inc. v. Commissioner, 91 TC 200, 204-05 (Tax Court #34122-85, 1988).*

7 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations
8 thereunder, the term "**amount paid**" refers to the value of any money or property paid
9 for the transfer of property to which § 83 applies.

10 26 CFR 1.83-4(b)(2) If property to which 1.83-1 applies is transferred at an arm's
11 length, **the basis of the property** in the hands of the transferee **shall be determined**
12 **under section 1012 and the regulations thereunder.**

13 26 CFR 1.1012-1(a) " . . . The cost is the amount paid for such property in cash or
14 other property."

15 26 CFR 1.1011-1 Adjusted basis.-The adjusted basis... is the cost or other basis
16 prescribed in **section 1012[.]**"

17 26 CFR 1.1001-1 Computation of gain or loss.

18 (a) *General rule.* Except as otherwise provided in subtitle A of the Code, the
19 gain or loss realized from the conversion of property into cash, or from the exchange of
20 property for other property differing materially either in kind or in extent, is treated as
21 income or as loss sustained. The amount realized from a sale or other disposition of
22 property is the sum of any money received plus the fair market value of any property
23 (other than money) received. **The fair market value of property is a question of fact,**
24 **but only in rare and extraordinary cases will property be considered to have no fair**
25 **market value.** The general method of computing such gain or loss is prescribed by
26 section 1001 (a) through (d) which contemplates that **from the amount realized upon**
27 **the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted**
28 **basis prescribed by section 1011 and the regulations thereunder (i.e., the cost or other**
basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable
against and applicable to such cost or other basis). **The amount which remains after**
the adjusted basis has been restored to the taxpayer constitutes the realized gain.

24. In the *Talmage* decision no citation is made to any legal authority, neither statute
nor regulation, upon which the exclusion from cost of property within which one has no basis is
founded. When construing the term "any property" the Supreme Court requires an express
authoritative exception before any exception will be permitted.

1 “Finally, respondent urges us, see Brief for Respondent 20-29, to invoke a
2 variety of general canons of statutory construction, as well as several prudential
3 doctrines of this Court, to create the statutory exemption he advances; among these
4 doctrines is our admonition that courts should construe statutes to avoid decision as to
5 their constitutionality. See, e.g., *Edward J. DeBartolo Corp. v. Florida Gulf Coast*
6 *Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *NLRB. v. Catholic*
7 *Bishop of Chicago*, 440 U.S. 490, 500 (1979). We respect these canons, and they are
8 quite often useful in close cases, or when statutory language is ambiguous. ***But we have***
9 ***observed before that such “interpretative canon[s] are] not a license for the judiciary***
10 ***to rewrite language enacted by the legislature.”*** *United States v. Albertini*, 472 U.S.
11 675, 680 (1985). ***Here, the language is clear and the statute comprehensive: 853 does***
12 ***not exempt*** assets to be used for attorney’s fees from its forfeiture provisions.

13 In sum, whatever force there might be to respondent’s claim for an exemption
14 from forfeiture under 853(a) of assets necessary to pay attorney’s fees - based on his
15 theories about the statute’s purpose, or the implications of interpretative canons, or the
16 understandings of individual Members of Congress about the statute’s scope - “[t]he
17 ***short answer is that Congress did not write the statute that way.”*** *United States v.*
18 *Naftalin*, 441 U.S. 768, 773 (1979).”

19 See *U.S. v. Monsanto*, 491 U.S. 600, 611 (1989).

20 25. The Appellee (US government) has won in the Supreme Court on five occasions
21 arguing that the statutory terms “any” and “any property” are all inclusive unless the law
22 provides for an exclusion of something from the item or class of thing, property, or matter to
23 which said term(s) applies. (See *United States v. Monsanto*, 491 US 600, 607-611 and
24 (syllabus) (1989); *United States v. Alvarez-Sanchez*, 511 US 350, 357 (1994); *United States v.*
25 *Gonzales*, 520 US 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535
26 US 125, 130-31 (2002) citing *Gonzalez and Monsanto*); *Ali v. Fed. Bureau of Prisons*, 552 US
27 214, 228, 128 S.Ct. 831, 835-36 (2008)). Appellant insists upon this standard.

28 26. This interpretation of “any” is universal. (See decisions citing *Gonzales, id.* “any” is
expansive and all inclusive: *Ashland Hospital Corp. v. RLI Ins. Co.*, Civil #13-143-DLB-EBA
(E.D. Kentucky, Northern Division, Ashland, March 17, 2015); *Electronic Privacy Center v.*
U.S. Dept. of Homeland Security, 777 F.3d 518, 525 (CA Dist. Columbia February
10, 2015); *Florida Health Sciences Center v. Sec. of U.S. Dept. of Health and Human Svcs.*,
Civil #14-0791 (ABJ) (USDC of D.C. March 31, 2015); *Florez v. Holder, U.S. Attorney*
General, Civil #14-874 (CA2 March 4, 2015); *United States v. Kaluza*, #14-30122 (CA5 March
11, 2015); *United States v. Shill*, 740 F.3d 1347, 1352 (CA9 January 14, 2014); *United States v.*
Weisinger, #13-3655-cr (CA2 October 6, 2014); *Arcia v. Florida Sec. of State*, 746 F.3d 1273,

1 1281 (CA11 **2014**); *In re Bernard Madoff Investment Securities, LLC v. IDA Fishman*
2 *Revocable Trust*, #12-2557-bk(L) (CA2 December 8, **2014**); *Natural Resources Defense*
3 *Council v. Environmental Protection Agency*, 755 F.3d 1010, 1019 (CA D.C. June
4 27, **2014**); *WNET, et al. v. Aero, Inc., et al.*, 722 F.3d 500, 510 (CA2 July 16, **2013**); *PBBPC,*
5 *Inc. v. OPK Biotech, LLC*, 484 B.R. 860, 868 (Jan 17, **2013**); *Harkness v. United States*, 727
6 F.3d 465, 471 (CA6 July 11, **2013**)).

7 “Petitioner’s argument is inconsistent with the statute’s language. (fn.
8 omitted) *The phrase “any other law enforcement officer” suggests a broad*
9 *meaning. Ibid.* (emphasis added). *We have previously noted that “[r]ead naturally, the*
10 *word ‘any’ has [836] an expansive meaning, that is, ‘one or some indiscriminately of*
11 *whatever kind.’” United States v. Gonzales*, 520 U.S. 1, 5, 117 S.Ct. 1032, 137 L.Ed.2d
12 132 (1997) (quoting Webster’s Third New International Dictionary 97 (1976)).
13 In *Gonzales*, we considered a provision that imposed an additional sentence for firearms
14 used in federal drug trafficking crimes and provided that such additional sentence shall
15 not be concurrent with “any other term of imprisonment.” 520 U.S., at 4, 117 S.Ct.
16 1032 (quoting 18 U.S.C. § 924(c)(1) (1994 ed.) (emphasis deleted)). Notwithstanding
17 the subsection’s initial reference to federal drug trafficking crimes, *we held that the*
18 *expansive word “any” and the absence of restrictive language left “no basis in the text*
19 *for limiting” the phrase “any other term of imprisonment” to federal sentences.* 520
20 U.S., at 5, 117 S.Ct. 1032. Similarly, in *Harrison v. PPG Industries, Inc.*, 446 U.S. 578,
21 100 S.Ct. 1889, 64 L.Ed.2d 525 (1980), the Court considered the phrase “any other final
22 action” in amendments to the Clean Air Act. The Court explained that the amendments
23 expanded a list of Environmental Protection Agency Administrator actions by adding
24 two categories of actions: actions under a specifically enumerated statutory provision,
25 and “any other final action” under the Clean Air Act. *Id.*, at 584, 100 S.Ct. 1889
26 (emphasis deleted). *Focusing on Congress’ choice of the word “any,” the Court*
27 *“discern[ed] no uncertainty in the meaning of the phrase, ‘any other final action,’”*
28 *and emphasized that the statute’s “expansive language offer[ed] no indication*
whatever that Congress intended” to limit the phrase to final actions similar to those
in the specifically enumerated sections. Id., at 588-589, 100 S.Ct. 1889.”

22 See *Ali v. Federal Bureau of Prisons*, 128 S.Ct. 831, 835-36 (2008). Here is US’ Reply Brief in
23 *Ali v. Federal Bureau of Prisons*, 128 S.Ct. 831 (2008):

24 “As this Court has repeatedly noted, “in any case of statutory construction, our
25 analysis begins with the language of the statute,” and, “where the statutory language
26 provides a clear answer, it ends there as well.” *Hughes Aircraft Co. v. Jacobson*, 525
27 U.S. 432, 438 (1999) (internal quotation marks and citation omitted); see *Connecticut*
28 *Nat’l Bank v. Germain*, 503 U.S. 249, 253-254 (1992) (noting that “courts must
presume that a legislature says in a statute what it means and means in a statute what it
says there”). That basic principle of statutory interpretation is equally applicable in

1 construing the FTCA. The Court has explained that, where the “straightforward
2 language” of an FTCA exception applies, judicially crafted limitations on the exception
3 - whether rooted in policy concerns or intimations in the legislative history - have no
4 place. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 701 (2004). **Section 2680(c) contains**
5 **precisely such “straightforward language,” and that language controls this case.** As is
6 relevant here, Section 2680(c) preserves the government’s immunity for any claim
7 concerning the “detention” of any property by “any officer of customs or excise or any
8 other law enforcement officer.” The phrase “any other law enforcement officer” thus
9 reaches “any * * * law enforcement officer” other than an “officer of customs or
10 excise.” The language of Section 2680(c) “leaves no room to speculate about
11 congressional intent,” because, “[r]ead naturally, *the word ‘any’ has an expansive*
12 *meaning, that is, ‘one or some indiscriminately of whatever kind.’” United States v.*
13 *Gonzales*, 520 U.S. 1, 5, 9 (1997) (quoting Webster’s Third New International
14 Dictionary 97 (1976)). **Accordingly, Section 2680(c) should be read to exempt claims**
15 **concerning the detention of property by all law enforcement officers.** (fn.3 omitted).”

16 “[W]hen the statute’s language is plain, the sole function of the courts * * * is to
17 enforce it according to its terms,” unless “the disposition required by the text is * * *
18 absurd.” *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6
19 (2000) (internal quotation marks and citation omitted). Petitioner does not contend that
20 construing Section 2680(c) to reach claims concerning the detention of property by all
21 law enforcement officers would produce absurd results. Nor could he plausibly do so,
22 because, far from being absurd, it is perfectly reasonable to immunize the federal
23 government against such claims. See pp. 37-45, *infra*. Under first principles of statutory
24 interpretation, therefore, Section 2680(c) should be read to mean what it says: *i.e.*, that
25 claims concerning the detention of property by any law enforcement officer are exempt
26 from the FTCA’s waiver of sovereign immunity.”

27 *Id.* at p. 9-10.

28 “Because the phrase “any other law enforcement officer” is broad but not
ambiguously, the *noscitur a sociis* canon has no application. Cf. *Pennsylvania Dep’t of*
Corr. v. Yeskey, 524 U.S. 206, 212 (1998) (noting that, “the fact that a statute can be
applied in situations not expressly anticipated by Congress does not demonstrate
ambiguity[;] [i]t demonstrates breadth”) (internal quotation marks and citation omitted);
accord *United States v. Monsanto*, 491 U.S. 600, 609 (1989) (characterizing statutory
reference in forfeiture statute to “any property” as “comprehensive,” “broad,” and
“unambiguous”).

Petitioner’s effort to use the *noscitur a sociis* canon dramatically to narrow the
scope of the statute simply cannot be squared with the expansive term “any.” See pp. 9-
10, *supra*. Petitioner seeks to use the canon here to invert the phrase “any other law
enforcement officer” to mean almost no other law enforcement officer. But that is a
weight that the canon cannot bear.”

Id. at p. 21-22.

1 27. The IRS' exclusion of the value of personal services from "the value of any money
2 or property paid," and from "cash or other property," is arbitrary, *a fortiori*, it is impermissible.
3 The *Talmage* court cited no such exception provided by law.

4 28. The parties have divergent interpretations of the same provision. The Appellant
5 reads § 83(a)'s "amount (if any) paid" - 26 CFR 1.83-3(g)'s "any money or property paid" -
6 and 26 CFR 1.1012-1(a)'s "cash or other property" as expansive, as all inclusive, but the
7 Appellee has *read into these provisions* an exception for property within which one has no
8 basis, but can cite no legal authority for such an exclusion. The executive has chosen the
9 subject of an income tax.

10 ***"The parties provide vastly differing interpretations of the statutory language, and
11 both contend that the language clearly supports their position."***

12 "The Commissioner's argument has considerable force, if one focuses solely on the
13 language of sections 1281 and 1283 and divorces them from the broader statutory
14 context. But we cannot do that. The Supreme Court has noted that, "***the true meaning
15 of a single section of a statute in a setting as complex as that of the revenue acts,
16 however precise its language, cannot be ascertained if it be considered apart from
17 related sections, or if the mind be isolated from the history of the income tax
18 legislation of which it is an integral part.***" (Cite omitted) According to the Court, the
19 construing court's duty is "***to find that interpretation which can most fairly be said to
20 be imbedded in the statute, in the sense of being most harmonious with its scheme
21 and with the general purposes that Congress manifested.***" (Cite omitted) The
22 circumstances of the enactment of particular legislation may be particular relevant to
23 this inquiry. (Cite omitted) ***Finally, when there is reasonable doubt about the meaning
24 of a revenue statute, the doubt is resolved in favor of those taxed.*** (Cite omitted)

25 As in all cases of statutory interpretation, ***we must start with the text of the
26 statute.*** But we cannot simply focus on sections 1281 through 1283 because they do not
27 exist in a vacuum. ***Rather, we must consider the context provided by the more general
28 statutory scheme of which [they] are a part.***"¹⁰

29. Of peculiar interest and conspicuous of Appellant's view of the *all inclusive* nature
30 of the language at issue is the Appellee's encouragement of this view spanning no less than
31 twenty-three years. Consider these instructions found in IRS Publication 17 Tax Guide For
32 Individuals (See **Ex.E**) which is in alignment with Petitioner's interpretation of 26 USC §§
33 **83(a) and 1012**, and relevant implementing regulations 26 CFR **1.83-3(g)** (*amount paid* is "any

34 ¹⁰ See *Security Bank of Minnesota v. C.I.R.*, 994 F.2d 432, 435-36 (CA8 1993).

1 money or property”), **1.83-4(b)(2)** (apply § 1012 to calculate cost), and **1.1012-1(a)** (cost is
2 “cash or other property”).

3 **1993** Edition pg. 117 “Cost Basis.- The basis of property you buy is usually its cost.
4 *The cost is* the amount of cash and debt obligations you pay for it and *the fair market*
5 *value of other property or services you provide in the transaction.* Your cost also
6 includes amounts you pay for . . . [.]”

7 **1994** Edition pg. 117 (same as 1993).

8 **1995** Edition pg. 115 “Cost Basis.- The basis of property you buy is usually its cost.
9 *The cost is* the amount of cash and debt obligations or in *other property.* Your cost also
10 includes amounts you pay for . . . [.]”

11 **1996** Edition pg. 114 “Cost Basis.- The basis of property you buy is usually its cost.
12 *The cost is* the amount of cash and debt obligations or in *other property.* Your cost also
13 includes, for example, amounts you pay for . . . [.]”

14 **1997** Edition pg. 99 (same as **1996**);

15 **1998** Edition pg. 95 “Cost Basis.- The basis of property you buy is usually its cost. *The*
16 *cost is* the amount you pay in cash, debt obligations, or *other property.* Your cost also
17 includes, for example, amounts you pay for the following items . . . [.]”

18 **1999** Edition pg. 95 (same as **1998**);

19 **2000** Edition pg. 94 “Cost Basis.- The basis of property you buy is usually its cost. *The*
20 *cost is* the amount you pay in cash, debt obligations, or *other property.* Your cost also
21 includes amounts you pay for the following items[.]”

22 **2001** Edition pg. 97 “Cost Basis.- The basis of property you buy is usually its cost. *The*
23 *cost is* the amount you pay in cash, debt obligations, *other property, or services.* Your
24 cost also includes amounts you pay for the following items[.]”

25 30. Same **2001** Edition phrase is found in IRS Publication 17 Tax Guide for Individuals:
26 **2002** Edition pg. 97, **2003** Edition pg. 101, **2004** Edition pg. 100, **2005** Edition pg. 89, **2006**
27 Edition pg. 89, **2007** Edition pg. 91, **2008** Edition pg. 93, **2009** Edition pg. 96, **2010** Edition pg.
28 95, **2011** Edition pg. 96, **2012** Edition pg. 96, **2013** Edition pg. 98, **2014** Edition pg. 98, **2015**
Edition pg. 98, and **2016** edition pg. 98.

31. The Appellee’s own publications contradict the *Talmage* court [reasoning] while
emulating or repeating the language of governing regulations 26 CFR 1.83-3(g) and 1.1012-
1(a), while any indulgence and edification is entirely out of reach. In *Talmage* no authorities

1 regarding “any” were cited out of a belief that interpreting that term *as expansive* was
2 understood.

3 “The Right to Be Informed.- Taxpayers have the right to know what they need to do to
4 comply with the tax laws. *They are entitled to clear explanations of the laws* and IRS
5 procedures in all tax forms, instructions, publications, notices, and correspondence.
6 They have the right to be informed of IRS decisions about their tax accounts and to
receive clear explanations of the outcomes.”

7 See: [<https://www.irs.gov/Taxpayer-Bill-of-Rights>]. See also *Helvering v. Tex-Penn Oil Co.*,
8 300 US 481, 498 (1937) (“The taxpayers were entitled to know the basis of law and fact on
9 which the Commissioner sought to sustain the deficiencies.”).

10 “But unless we wish anarchy to prevail within the federal judicial system, a precedent
11 of this Court must be followed by the lower federal courts no matter how misguided the
12 judges of those courts may think it to be.”

13 See *Hutto v. Davis*, 454 US 370, 375 (1982). See also *Hart v. Massanari*, 266 F.3d 1155,
14 *passim* (CA9 2001)).

15 32. The IRS and Department of Justice, as well as the courts, calculate income tax
16 liabilities related to compensation for services without regard to §§ 83, 212, 1001, 1011, and
17 1012 as required ¹¹ :

18 “Furthermore, the duty to file returns and pay income taxes is clear. Section 1
19 of the Internal Revenue Code imposes a federal tax on the taxable income of every
20 individual. 26 U.S.C. § 1. Section 63 defines “taxable income” as gross income minus
21 allowable deductions. 26 U.S.C. § 63. Section 61 states that “gross income means all
22 income from whatever source derived,” including compensation for services. 26
23 U.S.C. § 61. Sections 6001 and 6011 provide that a person must keep records and file a
24 tax return for any tax for which he is liable. 26 U.S.C. §§ 6001 & 6011. Finally, section
25 6012 provides that every individual having gross income that equals or exceeds the
26 exemption amount in a taxable year shall file an income tax return. 26 U.S.C. § 6012.
The duty to pay federal income taxes therefore is “manifest on the face of the statutes,
without any resort to IRS rules, forms or regulations.” *United States v. Bowers*, 920
F.2d 220, 222 (4th Cir. 1990). The rarely recognized proposition that, “where the law is
vague or highly debatable, a defendant - actually or imputedly - lacks the requisite
intent to violate it,” *Mallas*, 762 F.2d at 363 (quoting *United States v. Critzer*, 498 F.2d
1160, 1162 (4th Cir. 1974)), simply does not apply here.”

27 ¹¹ See 26 CFR 1.83-4(b)(2) If property to which 1.83-1 applies is transferred at an arm’s
28 length, *the basis of the property* in the hands of the transferee *shall be determined under
section 1012 and the regulations thereunder.*

1 See *US v. Melton*, #94-5535 (CA4 May 22, 1996 Unpublished) (USDC #CR-93-34 W.D. North
2 Carolina at Shelby).

3 33. The Appellee does not train IRS employees on the operation of § 83 or § 1012, nor
4 does it instruct staff on the maxims of law and canons of interpretation essential to the proper
5 application of governing statutory terms. Appellant has been deprived of the provisions of 26
6 USC §§ 83, 212, 1001, 1011, and 1012, as it relates to all alleged underpayments of an income
7 tax imposed by 26 USC ch.1 or ch.2. The Appellee's having named the subject of an income
8 tax through the *Talmage* exclusion violates the 16th Amdt. which authorizes only Congress to
9 lay an income tax.

10 **Issue D: The income tax imposed under 26 USC § 1 is not imposed by clear language;**
11 **lenity; void for vagueness; misleading statements from the IRS. The deficiency at issue is**
12 **void and amounts in controversy cannot be collected without a violation of Appellant's**
rights to due process.

13 **D(a) If the Appellee's interpretation regarding 26 USC § 83(a) is upheld, it must be**
14 **viewed as having misled the Appellant as to his duties and liabilities under 26 USC.**

15 34. When seen in juxtaposition, the profoundly severe penalty of \$6500.00 (US) in
16 *Talmage* and the IRS' having instructed each year for more than two decades that Appellant's
17 cost is his services, in language identical or similar to 26 CFR 1.83-3(g) and 1.1012-1(a)
18 ("value of any money or property paid" and "cash or other property"), one can readily see the
19 peril this situation poses. In reading the excerpt from the unpublished *Melton* decision, *supra*,
20 which frames the standard equation followed by the IRS and the public at large, if Appellant
21 has no gross income he needn't file a return. (26 USC § 6012).

22 35. If Appellant needn't file a return he needn't keep records. (26 USC §§ 6001, 6011).
23 If Appellant has received only § 83(a)'s "amount paid" he has no gross income or "excess," no
24 duty to file a return, *a fortiori*, no duty to keep records. Appellant sees regulations and the
25 Appellee's "Tax Guide for Individuals" instructing just the opposite of the *Talmage* exclusion
26 of personal services from cost, which has been proven to be an *arbitrary exclusion* which is
27 impermissible.

28 36. After using the term "any" in § 83(a), "any money or property" in 26 CFR 1.83-
3(g), and outright telling the Appellant that his cost includes his services, Appellee now asks of

1 this Court that it ratify the *Talmage* exclusion as lawful despite the non-existence of authorities
2 that provide, “except for property within which one has no basis.” This is a trap.

3
4 ***“The Internal Revenue Service has articulated eight reasons for a late filing that it***
5 ***considers to constitute “reasonable cause.” These reasons include unavoidable postal***
6 ***delays, the taxpayer’s timely filing of a return with the wrong IRS office, the taxpayer’s***
7 ***reliance on the erroneous advice of an IRS officer or employee, the death or serious***
8 ***illness of the taxpayer or a member of his immediate family, the taxpayer’s unavoidable***
9 ***absence, destruction by casualty of the taxpayer’s records or place of business, failure***
10 ***of the IRS to furnish the taxpayer with the necessary forms in a timely fashion, and the***
11 ***inability of an IRS representative to meet with the taxpayer when the taxpayer makes a***
12 ***timely visit to an IRS office in an attempt to secure information or aid in the preparation***
13 ***of a return. Internal Revenue Manual (CCH) § 4350, (24) ¶ 22.2(2) (Mar. 20, 1980)***
14 ***(Audit Technique Manual for Estate Tax Examiners). If the cause asserted by the***
15 ***taxpayer does not implicate any of these eight reasons, the district director determines***
16 ***whether the asserted cause is reasonable. “A cause for delinquency which appears to a***
17 ***person of ordinary prudence and intelligence as a reasonable cause for delay in filing***
18 ***a return and which clearly negatives willful neglect will be accepted as***
19 ***reasonable.”*** *Id.*, ¶ 22.2(3).”

20 See *United States v. Boyle*, 469 US 241, fn.1 (1985).

21 ***“This case is not one in which a taxpayer has relied on the erroneous advice of***
22 ***counsel concerning a question of law. Courts have frequently held that “reasonable***
23 ***cause” is established when a taxpayer shows that he reasonably relied on the advice***
24 ***of an accountant or attorney that it was unnecessary to file a return, even when such***
25 ***advice turned out to have been mistaken. [cites omitted] This Court also has implied***
26 ***that, in such a situation, reliance on the opinion of a tax adviser may constitute***
27 ***reasonable cause for failure to file a return. See Commissioner v. Lane-Wells Co.***, 321
28 U.S. 219 (1944) (remanding for determination whether failure to file return was due to
reasonable cause, when taxpayer was advised that filing was not required).

When an accountant or attorney advises a taxpayer on a matter of tax law,
such as whether a liability exists, it is reasonable for the taxpayer to rely on that
advice. Most taxpayers are not competent to discern error in the substantive advice of
an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a
“second opinion,” or to try to monitor counsel on the provisions of the Code himself
would nullify the very purpose of seeking the advice of a presumed expert in the first
place. See Haywood Lumber, supra, at 771. “Ordinary business care and prudence” do
not demand such actions.”

Id. at 250-51.

“Quite different from the question of a state’s power to discharge trustees is that
of the opportunity it must give beneficiaries to contest. *Many controversies have raged*
about the cryptic and abstract words of the Due Process Clause but there can be no

1 *doubt that at a minimum they require that deprivation of life, liberty or property by*
2 *adjudication be preceded by notice and opportunity for hearing appropriate to the*
3 *nature of the case.*

4 In two ways this proceeding does or may deprive beneficiaries of property. It
5 may cut off their rights to have the trustee answer for negligent or illegal impairments
6 of their interests. Also, their interests are presumably subject to diminution in the
7 proceeding by allowance of fees and expenses to one who, in their names but without
8 their knowledge, may conduct a fruitless or uncompensatory contest. *Certainly the*
9 *proceeding is one in which they may be deprived of property rights and hence notice*
10 *and hearing must measure up to the standards of due process.*

11 Personal service of written notice within the jurisdiction is the classic form of
12 notice always adequate in any type of proceeding. But the vital interest of the State in
13 bringing any issues as to its fiduciaries to a final settlement can be served only if
14 interests or claims of individuals who are outside of the State can somehow be
15 determined. *A construction of the Due Process Clause which would place impossible*
16 *or impractical obstacles in the way could not be justified.*

17 Against this interest of the State we must balance the individual interest sought
18 to be protected by the Fourteenth Amendment. This is defined by our holding that "*The*
19 *fundamental requisite of due process of law is the opportunity to be*
20 *heard.*" *Grannis v. Ordean*, 234 US 385, 394. This right to be heard has little reality or
21 worth unless one is informed that the matter is pending and can choose for himself
22 whether to appear or default, acquiesce or contest."

23 See *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 313-14 (1950).

24 37. The Appellant can assure the Court, and does so now, that he never in his lifetime
25 received an "excess over the amount (if any) paid" as provided by § 83(a); he has never
26 received "gross income" or "realized gain" as defined by § 83(a) and 26 CFR 1.1001-1(a).

27 38. Appellant charges that this situation violates his rights to a meaningful hearing at a
28 meaningful time, and that to uphold the subject deficiency sanctifies license for the Appellee's
treatment of the Appellant and the entrapment of others who may find themselves similarly
situated.

D(b) The tax at issue is not imposed by clear language; lenity.

39. If upheld as valid, the *Talmage* exclusion services and compensation from cost
under § 83(a) is still one not founded upon a specific provision of law and is contrary to an
orgy of authorities, including this Court regarding the term "any"; this is not clear language.
The *Talmage* exclusion from "any money or property" is arbitrary, not at all borne of *clear*
language. Misunderstandings relating to 26 USC and duties imposed thereby can lead to
prison. (26 USC § 7201 *et seq.*).

1 40. If the *Talmage* exclusion is upheld as valid then all are forced to speculate as to the
2 meaning of penal statutes. In the unknown presence of an arbitrary standard that determines
3 guilt or innocence, or any liability itself, one knows naught if speculation is even necessary.

4 “But the Internal Revenue Code cannot be so read, for *each section is not a self-*
5 *contained whole, but rather a building block of a complex, interrelated statute.*”

6 See *Hartman v. C.I.R.*, 65 T.C. 542 (T.C. 1975).

7 “We agree with the holdings of the District Court and the Court of Appeals on
8 the due process doctrine of vagueness. The settled principles of that doctrine require no
9 extensive restatement here. (fn.7 omitted) *The doctrine incorporates notions of fair*
10 *notice or warning.* (fn.8 omitted) *Moreover, it requires legislatures to set reasonably*
11 *clear guidelines for law enforcement officials and triers of fact in order to prevent*
12 *“arbitrary and discriminatory enforcement.”* (fn.9 omitted).”

13 See *Smith v. Gougen*, 415 US 566, 572 (1974). *And -*

14 “This ordinance is void for vagueness, both in the sense that it “*fails to give a*
15 *person of ordinary intelligence fair notice that his contemplated conduct is forbidden*
16 *by the statute,*” *United States v. Harriss*, 347 U.S. 612, 617, *and because it encourages*
17 *arbitrary and erratic arrests and convictions.* *Thornhill v. Alabama*, 310 U.S. 88;
18 *Herndon v. Lowry*, 301 U.S. 242.”

19 “*Living under a rule of law entails various suppositions, one of which is that*
20 *“[all persons] are entitled to be informed as to what the State commands or forbids.”*
21 *Lanzetta v. New Jersey*, 306 U.S. 451, 453.”

22 “*Lanzetta* is one of a well-recognized group of cases *insisting that the law give*
23 *fair notice of the offending conduct.* See *Connally v. General Construction Co.*, 269
24 U.S. 385, 391; *Cline v. Frink Dairy Co.*, 274 U.S. 445; *United States v. Cohen Grocery*
25 *Co.*, 255 U.S. 81. In the field of regulatory statutes governing business activities, where
26 the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines,*
27 *Inc. v. United States*, 342 U.S. 337; *United States v. National Dairy Products Corp.*,
28 372 U.S. 29; *United States v. Petrillo*, 332 U.S. 1.”¹²

“I agree with the Court that the Internal Revenue Code provision and the
corresponding Treasury Regulations that control consolidated filings are best
interpreted as requiring a single-entity approach in calculating product liability loss. I
write separately, however, because I respectfully disagree with the dissent’s suggestion
that, when a provision of the Code and the corresponding regulations are ambiguous,
this Court should defer to the Government’s interpretation. See post this page (opinion
of Stevens, J.). *At a bare minimum, in cases such as this one, in which the complex*
statutory and regulatory scheme lends itself to any number of interpretations, we
should be inclined to rely on the traditional canon that construes revenue-raising

¹² See *Papachristou v. City of Jacksonville*, 405 US 156, 172 (1972).

1 *laws against their drafter.* See *Leavell v. Blades*, 237 Mo. 695, 700-701, 141 S.W. 893,
2 894 (1911) (“*When the tax gatherer puts his finger on the citizen, he must also put his*
3 *finger on the law permitting it*”); *United States v. Merriam*, 263 U.S. 179, 188 (1923)
4 (“*If the words are doubtful, the doubt must be resolved against the Government and*
5 *in favor of the taxpayer*”); *Bowers v. New York & Albany Lighterage Co.*, 273 U.S.
6 346, 350 (1927) (“*The provision is part of a taxing statute; and such laws are to be*
7 *interpreted liberally in favor of the taxpayers*”). Accord, *American Net & Twine Co. v.*
8 *Worthington*, 141 U.S. 468, 474 (1891); *Benziger v. United States*, 192 U.S. 38, 55
9 (1904).”

10 See *United Dominion Industries, Inc. v. United States*, 532 US 822, 838-39 (2001).

11 41. Appellee is naturally unable to “put his finger” on an unwritten and wholly
12 unsupported standard or policy such as the *Talmage* exclusion. A tax must be imposed by clear
13 and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be
14 resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar*
15 *Refining v. McClain*, 192 US 397, 416 (1904); *Gould v. Gould*, 245 US 151, 153 (1917);
16 *Smietanka v. First Trust & Savings Bank*, 257 US 602, 606 (1922); *Lucas v. Alexander*, 279 US
17 573, 577 (1929); *Crooks v. Harrelson*, 282 US 55 (1930); *Burnet v. Niagra Falls Brewing Co.*,
18 282 US 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 US 498, 508 (1932);
19 *Gregory v. Helvering*, 293 US 465, 469 (1935); *Hassett v. Welch*, 303 US 303, 314 (1938);
20 *U.S. v. Batchelder*, 442 US 114, 123 (1978)).

21 “Void for vagueness simply means that criminal responsibility should not attach where
22 one could not reasonably understand that his contemplated conduct is proscribed.
23 *United States v. Harris*, 347 US 612, 617 (1954).”

24 See *US. v National Dairy Corp.*, 372 US 29, 32 (1963); see also *Browning-Ferris Industries of*
25 *Vermont v. Kelso Disposal, Inc.*, 492 US 257, 300-301 (1989); *US v. Classic*, 313 US 299, 331
26 (1941). Albert Einstein said:

27 “The hardest thing in the world to understand is the income tax.”

28 See: [<http://www.irs.gov/uac/Tax-Quotes>]

42. A court’s duty is to interpret the provisions relied upon. (See *Barnhart, Comm’r of*
Social Security v. Sigmon Coal Co., Inc., 534 US 438, 450 (2002) (“As in all statutory
construction cases, we begin with the language of the statute. The first step “is to determine
whether the language at issue has a plain and unambiguous meaning with regard to the

1 particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 US 337, 340
2 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 US 235, 240 (1989)). The
3 inquiry ceases “if the statutory language is unambiguous and ‘the statutory scheme is coherent
4 and consistent.’” 519 US, at 340.”).

5 “We shall begin our analysis with an exegesis of the general provisions of section 83.
6 We then shall examine those provisions in conjunction with the facts of the instant case
7 so that we may decide whether respondent adequately . . .”

8 See *Pagel, Inc. v. Commissioner*, 91 TC 200, 204 (Tax Court #34122-85, 1988).

9 43. Times change. Since 1994 the courts have refused all indulgence of claims
10 involving Appellant’s cited authorities, which keeps a resolution wholly out of reach. Without
11 cogent and responsible explanations as to how Appellant’s interpretation of the law is mistaken,
12 and how his contentions are ill-founded, the subject deficiency must be declared void.

13 **Issue E: Without clear and definitive explanation of the law and proof that it has operated**
14 **according to its letter, Appellant’s right to travel out of the country will be suspended**
15 **while access to the law is denied. Rights to due process are violated when Appellant is**
16 **sanctioned under § 7345 without proof the governing law has operated in accordance with**
17 **well established canons and maxims. This requires Appellee’s alleged deficiency be**
18 **declared invalid.**

19 44. Appellant has shown the Appellee to be bound by provisions it refuses to interpret
20 and explain, and that he has reasonable claims regarding the letter of provisions relating to this
21 controversy. The decision of this Court is the difference between Appellant having the right to
22 travel outside the United States and being prohibited from doing so.

23 26 USC § 7345 - Revocation or denial of passport in case of certain tax delinquencies.-

24 (a) In general.- ***If the Secretary receives certification by the Commissioner of***
25 ***Internal Revenue that an individual has a seriously delinquent tax debt, the Secretary***
26 ***shall transmit such certification to the Secretary of State for action with respect to***
27 ***denial, revocation, or limitation of a passport*** pursuant to section 32101 of the FAST
28 Act.

(b) Seriously delinquent tax debt.-

(1) In general.- For purposes of this section, the term “***seriously delinquent tax***
26 ***debt***” means an unpaid, ***legally enforceable Federal tax liability*** of an individual -

(A) which has been assessed,

(B) ***which is greater than \$50,000***, and

(C) with respect to which -

1 (i) *a notice of lien has been filed* pursuant to section 6323 and the
2 administrative rights under section 6320 with respect to such filing have been exhausted
or have lapsed, or

3 (ii) *a levy is made* pursuant to section 6331.

4 (2) [omitted]

5 45. This penalty or sanction is violative if imposed without a review of the relevant law
6 to prove it has in fact operated to impose the amounts now sought by the Appellee. "The
7 hearing, moreover, must be a real one, not a sham or a pretense." (See *Joint Anti-Fascist*
8 *Refugee Committee v. McGrath*, 341 US 123, 164 (1951) (invalidating as arbitrary USAG's
9 defamatory listing of JAFRC on list of purported Communists, citing *Palko v. Connecticut*, 302
US 319, 327 (1937))).

10 "[T]he *right to be heard before being condemned to suffer grievous loss* of any kind,
11 even though it may not involve the stigma and hardships of a criminal conviction, *is a*
12 *principle basic to our society*." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 US
13 123, 168 (1951) (concurring opinion.) See also *Homer v. Richmond*, 110 US.App.D.C.
226, 292 F.2d 719 (1961); *Parker v. Lester*, 227 F. 2d 708 (C.A. 9th Cir. 1955)."

14 *McGrath, id.* at 168. *And -*

15 "Due process also was violated by the City's unfortunate reaction to the Ciebien
16 family's threat of adverse publicity, which infused the disciplinary procedures with a
17 deliberate, illegitimate bias. *Due process requires that a hearing "must be a real one,*
not a sham or a pretense."

18 See *Ceichon v. City of Chicago*, 686 F.2d 511, 517 (CA7 1982). *And -*

19 "The likelihood of error that results illustrates that "fairness can rarely be obtained by
20 secret, one-sided determination of facts decisive of rights [And n]o better
21 instrument has been devised for arriving at truth than to *give a person in jeopardy of*
22 *serious loss notice of the case against him and opportunity to meet it*." *Joint Anti-*
Fascist Refugee Comm. v. McGrath, 341 US 123, 170-172 (1951) (Frankfurter, J.,
concurring)."

23 See *Connecticut v. Doehr*, 501 US 1, 14 (1991). *And -*

24 "To repeat, we deal here with a constitutional right of the citizen, a right which we
25 must assume Congress will be faithful to respect. We would be faced with important
26 constitutional questions were we to hold that Congress by § 1185 and § 211a had given
27 the Secretary *authority to withhold passports to citizens because of their beliefs or*
associations. Congress has made no such provision in explicit terms; and absent one,
28

1 the Secretary may not employ that standard to restrict the citizens' right of free
2 movement."

3 See *Kent v. Dulles*, 357 US 116, 130 (1958). *And -*

4 "Suspension of issued licenses thus involves state action that adjudicates important
5 interests of the licensees. In such cases the licenses ***are not to be taken away without***
6 ***that procedural due process required*** by the Fourteenth Amendment. *Sniadach v.*
Family Finance Corp., 395 US 337 (1969); *Goldberg v. Kelly*, 397 US 254 (1970)."

7 See *Bell v. Burson*, 402 US 535, 539 (1971). *And -*

8 "It is of course well-established that due process requires 'that ***a hearing must be a***
9 ***real one, not a sham or pretense.***' See *Joint Anti-Fascist Refugee Comm. v. McGrath*,
341 US 123, 164 (1951)."

10 See *Dietchweiler v. Lucas*, #15-1489 (CA7 June 28, 2016).

11 46. Appellant charges that 26 CFR 1.1-1 is invalid for the fact that it impermissibly
12 "add[s] to the statute of something which is not there." (See *US v. Calamaro, supra*). Had this
13 impermissible and unconstitutional promulgation not occurred, the law is void of any reference
14 to citizens of the United States as the subject of the income tax imposed at § 1; a regulation
15 identifies the subject of the tax.

16 47. Based upon the relevant provisions (See "Statement of the Issues") having been
17 barred from discussion of any nature under threat of life-destroying monetary sanctions, by
18 Tax Court, Appellant rightfully believes that he has no duty to file or to pay, and this is
19 expressly supported by the Appellee's having told him that his personal services actually
20 performed are a cost to him, *a fortiori*, the value of such constituting an "amount paid"
21 under § 83(a) and a deductible cost under § 212 if mistakenly included in gross income.
(See **Ex.E** IRS Publication 17 excerpts).

22 48. When in receipt of only the fair market value of his personal services as
23 compensation for such, Appellant's not filing tax returns, his not generating and keeping
24 records, and his not paying any tax under 26 USC ch.1, 2, or 21, clearly constitutes his
25 doing what the law plainly permits. Were this not the case, Appellee and Tax Court would
26 permit discussion of the subject provisions.

27 "The Right to Be Informed.- Taxpayers have the right to know what they need to do to
28 comply with the tax laws. ***They are entitled to clear explanations of the laws*** and IRS

1 procedures in all tax forms, instructions, publications, notices, and correspondence.
2 They have the right to be informed of IRS decisions about their tax accounts and to
3 receive clear explanations of the outcomes.”

4 See: [<https://www.irs.gov/Taxpayer-Bill-of-Rights>]. See also *Helvering v. Tex-Penn Oil Co.*,
5 300 US 481, 498 (1937) (“The taxpayers were entitled to know the basis of law and fact on
6 which the Commissioner sought to sustain the deficiencies.”).

7 49. “To punish a person for doing what the law plainly permits is a due process
8 violation of the most basic sort.” (See *Bordenkircher v. Hayes*, 434 US 357, 363 (1978).
9 *Accord*, citing *Bordenkircher: US v. Goodwin*, 457 US 368, 372 (1982); *US v. Dorsey*, #06-
10 16698 (CA11 Decided Jan. 14, 2008); *US v. Segal, et al.*, 495 F.3d 826, 832 (CA7 2007); *US*
11 *v. Osmani*, 20 F.3d 266, 269 (CA7 1994); *US v. Warda*, 285 F.3d 573, 580 (CA7 2002); *US v.*
12 *Jarrett*, 447 F.3d 520, 525 (CA7 2006); *Corcoran v. Buss*, 551 F.3d 703, 710 (CA7 2008); *US*
13 *v. Contreras*, 108 F.3d 1255, 1262 (CA10 1997); *US v. Tarallo*, 380 F.3d 1174, 1194 (CA9
14 2004); *Nulph v. Cook*, 333 F.3d 1052, 1056 (CA9 2002); *White v. Ford Motor Co.*, 312
15 F.3d 998, 1019-20 (CA9 2000); *US v. Murphy*, 65 F.3d 758, 762 (CA9 1995)).

16 50. “The law plainly permits” the Appellant to treat “the amount (if any) paid” as not
17 gross income, to treat “any money or property paid” as not gross income, and to treat “cash or
18 other property” as not gross income. (See 26 USC §§ 83, 212, 1001, 1011, 1012, and
19 regulations thereunder). If this void of access to the law is allowed to persist, Appellant’s rights
20 to travel outside America will be suspended until such time as an agreement for payment is
21 made with the Appellee and cash is flowing to pay what nobody can prove is owed by law.

22 51. Appellant believes that the law protects him but is barred by conduct already
23 detailed from asserting claims based upon the subject provisions. Any process in this court that
24 does not include disclosure of the operation of the subject provisions but which upholds
25 Appellee’s deficiency allegations serves to deprive the Appellant of procedural due process
26 rights (5th Amdt.) relative to instances where important liberty interests may be withheld.
27 Absent such disclosure, only dismissal of Appellee’s presumably arbitrary and capricious claim
28 of deficiency suffices as due process.

///

///

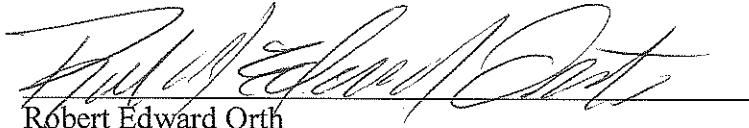
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CONCLUSION

52. This Court will now watch as the Appellee pays its tribute to the Court as a place where, in its view, government gets away with anything, for its pleadings will ring hollow and of evasion of the authorities from which it's fled for more than twenty-four years. For each and all of the reasons set forth above, the Appellee's alleged deficiency must be declared invalid.

Respectfully submitted:



Robert Edward Orth
7207 Lafayette Rd.
Indianapolis, IN 46278-1503

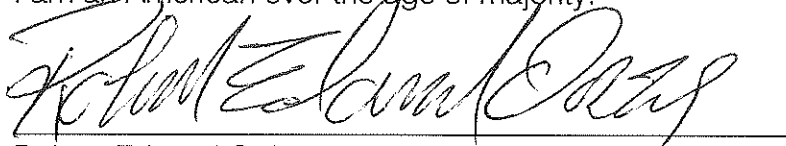
CERTIFICATE OF SERVICE

I, Robert Edward Orth, do hereby declare and certify that I did deposit in to U.S. 1st Class Post within adequate packaging 15 copies of my 7th Cir. APPEAL BRIEF Docket No. 17-3348 dated February 28, 2018 to the following party:

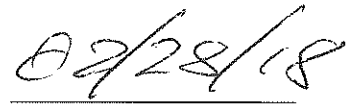
U.S. COURT of APPEALS 7th CIR
219 S. Dearborn Street,
Room 2722
Chicago, IL 60604
Attn:
Office of Clerk of Court
312-435-5850

Priority Mail Express Overnight # EE160325537 US

I am an American over the age of majority.



Robert Edward Orth



Date

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Robert Edward Orth,)	
)	
Petitioner,)	
)	
v.)	Docket No. 18049-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case is currently set for trial at the session of the Court commencing on October 30, 2017, in Indianapolis, Indiana. The Commissioner determined that Mr. Orth had unreported nonemployee compensation resulting in deficiencies for 2012 and 2013, along with additions to tax for failure to file, failure to pay, and failure to make estimated tax payments. On May 16, 2016, the Commissioner sent Mr. Orth a notice of deficiency for 2012 and 2013, and Mr. Orth filed a timely petition. At the time of the petition, Mr. Orth resided in Indianapolis, Indiana.

Pending before the Court is the Commissioner's motion for summary judgment filed August 31, 2017. In his motion, the Commissioner argues that Mr. Orth did not raise any factual dispute and that the legal issues are ripe for decision. Because Mr. Orth only offers arguments as to why he should not be taxed, the Commissioner alleges there is no genuine dispute as to any material fact for trial. Specifically, the Commissioner argues that he is entitled to summary judgment on the issue of unreported income because Mr. Orth does not dispute receiving nonemployee compensation for the years at issue. The Commissioner conceded the addition to tax for failure to make estimated tax payments for 2012.

As for the other additions to tax, the Commissioner argues that he is entitled to summary judgment because the Commissioner has provided records to demonstrate that they apply, and Mr. Orth failed to dispute the additions. To support the motion, the Commissioner filed a signed certification of lack of record for 2012 and 2013 and certificates of assessment, payments, and other specified matters for 2012 and 2013. The certificates of assessment show that the Commissioner generated a substitute for return and subsequently issued Mr. Orth a

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notice of deficiency for those years. They also indicate that Mr. Orth did not make any payments for 2012 and 2013.

In his response to the Commissioner's motion, Mr. Orth does not dispute any facts set forth in the Commissioner's motion. Mr. Orth does not dispute the fact that he did not timely file his income tax returns, or that he failed to make payments towards his 2012 and 2013 tax liability. Instead, he asserts a variety of frivolous arguments briefly discussed below.

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials.¹ However, summary judgment is not a substitute for trial and should not be invoked in proceedings where the facts are disputed.² We may grant summary judgment only if "there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law."³

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of any material fact.⁴ "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party."⁵ When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.

Mr. Orth has not set forth any facts showing that there is a genuine dispute for trial. Neither his petition nor his response to the motion for summary judgment contest the facts set out by the Commissioner. We conclude that a decision may be rendered as a matter of law.

Mr. Orth makes a frivolous argument about the application of section 83. He claims that section 83 does not apply to compensation for services. But section

¹ RSW Enterprises, Inc. v. Commissioner, 143 T.C. 401, 404 (2014); Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

² Shiosaki v. Commissioner, 61 T.C. 861, 862 (1974).

³ Rule 121(b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

⁴ Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

⁵ FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

61 includes in gross income compensation for services. Section 83 is one of several provisions that specifically include items in income, but it does not displace the general rule that compensation for services is income. Mr. Orth's section 83 argument is frivolous. And we have previously held that it is frivolous.⁶

Likewise, Mr. Orth's claim that self-employment tax does not apply to U.S. citizens is baseless. Self-employment tax applies to individuals other than nonresident aliens.⁷

Mr. Orth raises the issue of whether this deficiency case is subject to the Administrative Procedures Act (APA). He concludes that it is and cites to a collection case for that proposition. His citation is erroneous; deficiency cases are not subject to the APA.⁸

Mr. Orth raises the concern that presenting his frivolous arguments in our Court may lead to a sanction being imposed against him. He is right to be concerned.⁹ Raising frivolous arguments wastes precious court resources. One purpose of sanctions is to deter frivolous arguments from being presented or perpetuated. Although that is precisely what Mr. Orth did, we will not impose a sanction. Rather, we caution him against making frivolous arguments in the future. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment is granted. It is further

⁶ Santangelo v. Commissioner, T.C. Memo. 1995-468, aff'd, 87 F.3d 1322 (9th Cir. 1996). Notably, Mr. Orth cited Santangelo in his petition, but we suspect he did so unknowingly. His petition and his response to the motion for summary judgment appear to be cobbled together, verbatim, from the tax protester Website WEvGOV.com. On the internet, one can find many variations of the quote "Don't believe everything you read on the internet", most often attributed to Abraham Lincoln. See, e.g., <https://www.thoughtco.com/the-problem-with-quotes-on-the-internet-3970560>. That meme, even with its apocryphal provenance, is worth heeding.

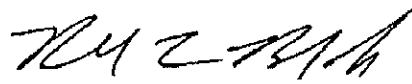
⁷ Sec. 1402(b).

⁸ QinetiQ U.S. Holdings, Inc. & Subsidiaries v. Commissioner, 845 F.3d 555, 561 (4th Cir. 2017), aff'g T.C. Memo. 2015-123; Ax v. Commissioner, 146 T.C. 153, 163 (2016).

⁹ See sec. 6673(a)(1)(B).

ORDERED and DECIDED that there are deficiencies in income tax and additions to tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax/Penalties</u>		
		<u>6651(a)(1)</u>	<u>I.R.C. §§ 6651(a)(2)</u>	<u>6654(a)</u>
2012	\$31,176.00	\$7,014.60	\$5,455.80	\$ 0.00
2013	\$40,391.00	\$9,087.98	\$4,644.97	\$ 725.29



Ronald L. Buch
Judge

ENTERED: **OCT 12 2017**