

*The American Society of Tax  
Problem Solvers*  
October 24, 2013

*“Frivolous Tax  
Arguments”*

# Frivolous Tax Arguments

## □ Frivolous Arguments

- The filing of a tax return is voluntary
- Payment of federal income tax is voluntary
- TP's can reduce their federal tax liability by filing a "zero-return"
- The IRS "must" file a federal tax return for TP's who fail to do so
- Compliance with an administrative summons is voluntary
- Wages, tips and other compensation for personal service is not income
- Only foreign source income is taxable, etc.

# “Contentions”

- ❑ Voluntary Nature of Federal Income Tax
- ❑ Taxable Income & Gross Income
- ❑ Terms Defined by the IRC
- ❑ Constitutional Amendment Claims
- ❑ Fictional Legal Bases

# “CDP-Contentions”

- Invalidity of the Assessment
- Invalidity of the Notice of Deficiency
- Invalidity of a Notice of Federal Tax Lien
- Invalidity of the CDP Notice
- Verification Given per IRC §6330(c)(1)

# “CDP-Contentions”

- Invalidity of Statutory-Notice & Demand
- Tax Court Authority
- Challenges to the Authority of IRS Employees
- Use of Unauthorized Representatives
- No Authority Under IRC

# “Civil Penalties”

- ❑ IRC §6662, “Imposition of Accuracy Related Penalty”
- ❑ IRC §6663, “Civil Fraud Penalty”
- ❑ IRC §6702(a), “Civil Penalty for Frivolous Tax Return”
- ❑ IRC §6702(b), “Penalty for Specified Frivolous Submission”

# “Civil Penalties”

- ❑ IRC §6651, “Failure to File, Pay & Fraudulent Failure to File a Tax Return”
- ❑ IRC §6673, “Penalty for Frivolous Arguments Raised in Tax Court”
- ❑ IRC §6682, “Penalty for Providing False Information”

# “Criminal Penalties”

- ❑ IRC §7201, “Penalty for Attempting to Evade or Defeat a Tax”
- ❑ IRC §7203, “Penalty for Willful Failure to File a Tax Return”
- ❑ IRC §7206(a), “Penalty for Making False Statements”

# “Practitioner Penalties”

- ❑ IRC §6694, “Understatement of Taxpayer’s Liability by Tax Return Preparer”
  - IRC §6694(a)-\$1,000
  - IRC §6694(b)-\$5,000
  
- ❑ IRC §6700, “Promoting Abusive Tax Shelters, Etc.”
  
- ❑ IRC §6701, “Penalties for Aiding & Abetting Understatement of Tax Liability”
  
- ❑ IRC §7206, “Fraud & False Statements”



# “Frivolous Positions-Notice 2007-30”

- ❑ The purpose of “Notice 2007-30” was to formally define and publish the list of positions identified as frivolous.
- ❑ Section 407 of the “Tax Relief & Health Care Act of 2006”, Pub. L. No. 109-432, 120 Stat. 2922 (2008), amended IRC §6702 to increase the amount of the penalty for frivolous tax returns from \$500 to \$5,000 and to impose a penalty of \$5,000 on any person who submits a “specified frivolous submission”.



# IRS Revenue Rulings

- ❑ The Revenue Rulings listed below address several specific frivolous arguments as follows:
  - ❑ Rev. Rul. 2007-19:
    - “Wages are not Taxable Income”
  - ❑ Rev. Rul. 2007-20:
    - “Filing returns & the payment of income tax are voluntary”
  - ❑ Rev. Rul. 2007-21:
    - “The IRS must provide Form 23C prior to assessment”
  - ❑ Rev. Rul. 2007-22:
    - “Income is not taxable due to claim of non-citizenship”

# Suspected Tax Fraud Activity

- ❑ Any suspected “tax fraud activity” should be reported via IRS **Form 3949-A, “Information Referral”**. However, practitioners are also allowed to report such suspected fraudulent activity via a letter or formal correspondence in lieu of filing Form 3949-A. The letter or Form 3949-A should provide the following information:
  - Info regarding the person/persons suspected of fraudulent activity
  - The specific fraudulent activity being reported
  - How you (or the taxpayer) became aware of the activity
  - Also, if known, when the alleged fraudulent activity occurred
  - The amount of any money and/or funds involved, and
  - Any other information that might be relevant to the IRS investigation

# Relevant Judicial Decisions & Court Cases

## ❑ *Wnuck v. Commissioner (2011):*

- Taxpayer claimed that he “exchanged his skilled labor & knowledge for pay” therefore his wage/income was not taxable.

## ❑ *Helvering v. Gerhardt & NY Port Authority Employees (1938):*

- Taxpayer claimed that compensation of employees of the Port of New York Authority is exempt from federal income tax.

## ❑ *United States v. Tedder (1986):*

- Taxpayer argued that “the federal government lacked the power to enact criminal statutes to enforce the tax code”. Choice of counsel also denied.

## ❑ *Schiff v. United States (1990):*

- Summary judgment was granted against this taxpayer who was deemed as a “tax protestor” & it was determined his arguments were frivolous.

# Relevant Judicial Decisions & Court Cases

## ❑ Stewart v. Commissioner (2005):

- An individual was liable for additions to tax for failure to file income tax returns, however the individual was **not liable** for a penalty under IRC §6673 because his argument regarding a reduction of gross income for business expenses was based on a prior Tax Court opinion & therefore **was not frivolous**.

## ❑ United States v. Becker (1958):

- An employee assigned his inventions “in entirety” to his employer. Treatment of misclassified payments not deemed “frivolous”.

## ❑ Commissioner v. Glenshaw Glass Co. (1956):

- Taxpayer’s arguments were **not deemed “frivolous”** or fraudulent and subsequently was determined to qualify for relief under IRC §722(b)(5) .

## ❑ Stelly v. Commissioner (1985):

- The Court of Appeals affirmed penalties against the taxpayers for filing a “frivolous return” & for filing a “frivolous appeal”.

# Relevant Judicial Decisions & Court Cases

## ❑ Callahan v. Commissioner (2009):

- A couple was sanctioned by the U.S. Court of Appeals for “maintaining” a frivolous appeal based upon arguments that their “wages were exempt from taxation”. Also IRS Counsel was “not required” to testify at trial.

## ❑ United States v. Hilgeford (1993):

- Taxpayer argued that he was a “citizen of a state”, but not the “United States”, was found guilty of “willfully filing false income tax returns”.

## ❑ United States v. Ambort (2005):

- A seminar organizer willfully aided & assisted seminar attendees in the preparation of false income tax returns & knowingly advised attendees to classify themselves as “non-resident” aliens to obtain erroneous refunds.

## ❑ Takaba v. Commissioner (2002):

- The Court imposed a penalty pursuant to IRC §6673 (a)(1) against the taxpayer for pursuing “frivolous arguments” **and** imposed a liability of \$10,500 against the taxpayer’s attorney for continuing such arguments.

# Relevant Judicial Decisions & Court Cases

## ❑ Smith v. Commissioner (2000):

- A self-employed carpenter was liable for the “delay penalty” for **maintaining** a frivolous proceeding after being “warned” by the IRS.

## ❑ Montero v. Commissioner (2009):

- A taxpayer was subject to “frivolous return penalties” because he filed Amended Tax Returns that contained incorrect information based upon the frivolous claim that “compensation received from a private employer” was exempt from federal income tax.

## ❑ Jenkins v. Commissioner (2007):

- An individual was not allowed to retain the unpaid portion of his federal taxes on the basis of his “religious objections” to **military spending**.

## ❑ Wolcott v. Commissioner (2008):

- The IRS did not abuse its discretion in deciding to proceed with collection action against an individual who raised “frivolous arguments” and failed to respond to Appeal’s request for W&I info and a face-to-face conference.

# Relevant Judicial Decisions & Court Cases

## ❑ United States v. Foster (2002)

- A taxpayer attached a Form 2439 to her tax return claiming a \$500,000 refund which indicated the “U. S. Department of Treasury” as the “Regulated Investment Company”. However, the Government was allowed to recover the “\$500,000 erroneous refund”, based upon the taxpayer’s **frivolous Form 2439** & its timely claim.

## ❑ Osband v. Commissioner (2013):

- A taxpayer was liable for the frivolous return penalty for the three years at issue when she filed returns asserting claims for refunds based upon fictitious interest and W/H. The taxpayer also submitted “**falsified OID forms**” to the IRS purporting to be from legitimate financial institutions.

## ❑ Williams v. United States (2013):

- Taxpayer was assessed a \$5,000 penalty under IRC §6702(a) for filing a frivolous return indicating that “although she is a citizen & resident of the United States, she is physically not present in the United States & has no U.S. immigration status”.

KIMBERLY [REDACTED]  
[REDACTED] WULFSON ST  
CRONLEY TX [REDACTED]-4183

Taxpayer Identification Number: [REDACTED]-60-  
Forms: 1040X  
Tax Period(s): Dec. 31, 2009

Employee Identification Number: 1000099691 M/S 4450  
Contact Telephone Number: 866-888-0235  
Contact Fax Number: 801-620-2391

Dear Taxpayer:

You recently filed a return or purported return claiming one or more frivolous positions. If not immediately corrected, the Internal Revenue Service will assess a \$5,000 penalty against you. You can correct the problem and avoid the penalty if you submit a corrected return within 90 days of this letter to the address listed above.

If you continue to submit documents asserting frivolous positions, we will assess the \$5,000 penalty each time you submit a frivolous return. If you file a joint return, we will assess the \$5,000 penalty against both you and your spouse. Internal Revenue Code section 6702 provides the IRS with the authority to assess the penalty.

#### WHY WE ARE CONTACTING YOU

Based on Section 6702, Frivolous Tax Submissions, we have determined the information you filed as a tax return, or purported tax return, on Apr. 15, 2012 is frivolous and there is no basis in the law for your position.

Federal courts, including the Supreme Court of the United States, have considered positions such as yours and repeatedly rejected them as without merit. The enclosed Publication 2105, Why do I Have to Pay Taxes?, includes examples of frivolous positions and arguments regarding the U.S. tax system under the heading "Don't Fall for These Arguments." Some of these examples include:

- Arguing that filing and paying taxes is voluntary.
- Excluding salaries and/or wages from income based on the argument that the value of services is not taxable or that salaries and/or wages are not income.
- Arguing that the requirement to file a tax return violates

0469000192  
Mar. 06, 2013 LTR 3176C 0  
-60- 200912 3D 0  
Input Op: 0469059232 00034168

KIMBERLY [REDACTED]  
[REDACTED] WOLFSON ST  
CROWLEY TX [REDACTED] 4101

asserting a frivolous position, we will assess the \$5,000 penalty for each frivolous tax return or purported return containing a frivolous position and send you a bill. If you filed a joint frivolous return, both you and your spouse will be assessed a \$5,000 penalty. We will not respond to any future correspondence asserting any frivolous position.

In addition, if we do not hear from you within the 30 day timeframe, we may issue a notice of deficiency for any taxes owed because of the frivolous submission or because of other items we may find during an examination. A notice of deficiency states the amount of additional tax and penalties you owe and explains your right to contest the deficiency by filing a petition with the United States Tax Court. The \$5,000 frivolous filing penalty is not included on the notice of deficiency and cannot be contested in the Tax Court.

We have enclosed Publication 2105, Why Do I Have to Pay Taxes?, which provides basic information about the tax system. We also encourage you to seek advice from a competent tax professional or a tax attorney qualified to practice in your state. A copy of this letter and any referenced enclosures have been forwarded to your authorized representative(s).

Sincerely yours,



Layna Carver  
Operations Mgr., Exam SC Support.

Enclosure(s):  
Copy of this letter  
Publication 2105  
Envelope


**Internal Revenue Service**  
 United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

**Account Transcript**

 Request Date: 10-09-2013  
 Response Date: 10-02-2013  
 Tracking Number: 1001932157,1

 AGENCY NUMBER: CIVIL PENALTY  
 TAX PERIOD: Dec. 31, 2012

TAXPAYER IDENTIFICATION NUMBER: ████████-██████

 KIMBERLY ████████  
 ████████ COLLESON ST  
 CROSBRY, TX ████████ 75117

&lt;&lt;&lt;&lt;POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TTA) ON FILE&gt;&gt;&gt;&gt;

ANY OTHER OPEN BOOK DEBT SIGNIFCANT CREDIT AMOUNT

 ACCOUNT BALANCE: 10,010.49  
 ACCRUED INTEREST: 470.61 AS OF Oct. 15, 2013

 ACCOUNT BALANCE PLUS ACCRUALS  
 (only to net a payoff amount): 10,474.40

\*\* INFORMATION FROM THE RETURN OR AS ADJUSTED \*\*

## TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE DATE	AMOUNT
240	Miscellaneous penalty IRB 6012 -penalty for filing delinquent Tax Return	20120209 09-30-2012	\$5,000.00
L/A	82204-002-32101-2		
380	Additional tax assessed	20120305 04-30-2012	\$1.00
L/A	92204-502-52101-2		
971	Notice issued UP 9012	05-30-2012	\$0.00
240	Miscellaneous penalty IRB 6012 -penalty for filing delinquent Tax Return	20120505 05-28-2012	\$5,000.00
L/A	92204-570-52101-2		
390	Additional tax assessed	20120505 05-30-2012	\$0.00
L/A	92304-530-52101-2		
140	Interest charged for late payment	20120906 09-28-2012	\$11.43
971	Notice issued UP 9012	05-28-2012	\$0.00



871	Tax period blocked from automated levy program	11-19-2012	\$0.00
892	Lien placed on assets due to balance owed	11-09-2012	\$0.00
971	Collection due process Notice of Rights & Levy -- Issued	11-05-2012	\$0.00
971	Issued notice of Lien Filing and right to Collection Due Process Hearing	11-13-2012	\$0.00
971	Installment agreement established	11-30-2012	\$0.00
971	Collection due process request received timely	12-10-2012	\$0.00
47	Collection due process Levy (hearing) request or levy and lien (hearing) request received	12-17-2012	\$0.00
861	Appointed representative	01-09-2013	\$0.00
972	Collection due process Levy (hearing) request or levy and lien (hearing) request received	12-10-2012	\$0.00
820	Bankruptcy or other legal action filed	12-03-2012	\$0.00
971	Collection due process Levy (hearing) request or levy and lien (hearing) request received	12-13-2012	\$0.00
47	Collection due process request received timely	2-13-2013	\$0.00
822	Removed bankruptcy or other legal action	12-05-2012	\$0.00
820	Bankruptcy or other legal action filed	12-05-2012	\$0.00

This product contains sensitive taxpayer data




**Internal Revenue Service**  
 United States Department of the Treasury

This Transcript Contains Sensitive Taxpayer Data

**Account Transcript**

 Request Date: 10-02-2013  
 Response Date: 10-02-2013  
 Tracking Number: 103173217157

 FORM NUMBER: 1040  
 TAX PERIOD: Dec. 31, 2010

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

 ADDRESS: [REDACTED]  
 [REDACTED]  
 [REDACTED] COLLESON ST  
 CROVELLY, TX [REDACTED]

&lt;&lt;&lt;&lt;POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TIA) ON FILE&gt;&gt;&gt;&gt;

--- ANY MINUS SIGN SHOWS NEGATIVE SIGNIFICANT CREDIT AMOUNT ---

ACCOUNT BALANCE:	5,236.22	
ACCRUED INTEREST:	293.14	AS OF: Oct. 19, 2013
ACCRUED PENALTY:	766.89	AS OF: Oct. 19, 2013

ACCOUNT BALANCE PLUS ACCRUALS (This is not a payoffs amount):	6,496.25
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\*\* INFORMATION FROM TFR RETURN OR AS ADJUSTED \*\*

DEFICIENCY:	01
FILING STATUS:	91-7-18
ADJUSTED GROSS INCOME:	67,643.00
TAXABLE INCOME:	55,812.00
TAX FOR RETURN:	10,143.00
EE TAXABLE INCOME (WARRANTY):	0.00
EE TAXABLE INCOME (GROSS):	0.00
TOTAL SELF EMPLOYMENT TAX:	0.00

APRIMA OUR MAIL OR RETURN RECEIVED DATE (WHICHEVER IS LATER)	Jul. 24, 2010
PROCESSING DATE	Aug. 16, 2010

## TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE DATE	AMOUNT
100	Tax return filed	20103108 09-16-2010	515,143.00



n/a	5622L-207-01528-0			
606	W 2 or 1099 withholding	04-15-2010		-521,663.00
756	Credit to your account	04-15-2010		-4003.00
806	Refund issued	06-16-2010		933,921.00
977	Review of unreported income	01-10-2012		80.00
610	Advance payment of tax owed	00-12-2011		-81,000.00
807	Reduced or removed W-2 or 1099 withholding	04-15-2010		98,414.00
290	Additional tax assessed	20120405 02-06-2012		\$0.00
n/a	70954-409-05232-2			
195	Interest charges for late payment	20120405 02-06-2012		\$505.18
276	Penalty for late payment of tax	20120405 02-06-2012		\$523.15
471	Notice issued of 0022	02-06-2012		85.00
971	Installment agreement established	10-01-2011		\$0.00
558	Tax return filed	01-27-2012		\$0.00
810	Refund freeze	01-27-2012		\$0.00
571	Amended tax return or claim forwarded for processing	02-13-2012		\$0.00
977	Amended return filed	02-13-2012		\$0.00
n/a	89276-453-02906-2			
571	Amended tax return or claim forwarded for processing	03-19-2012		\$0.00
977	Amended return filed	03-19-2012		\$0.00
n/a	E9217-435-05305-2			
670	Payment Levy	12-04-2012		-9903.15
950	Appointed representative	12-05-2012		\$0.00
971	Installment agreement established	09-01-2011		\$0.00
570	Bankruptcy or other legal action filed	12-05-2012		\$0.00
122	Removed bankruptcy or other legal action	12-05-2012		\$0.00
971	Collection due process Notice of Intent to Levy -- issued	11-05-2012		\$0.00

This Product Contains Sensitive Taxpayer Data

# Frivolous Tax Arguments

## Frivolous Tax Arguments-Q & A:



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# Frivolous Tax Arguments

- *Frivolous Tax Arguments*

LG Brooks, EA, CTRS

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