No. _____

In The

Supreme Court of the United States

Robert Edward Orth,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court For Appeals
Seventh Circuit

Petition for Writ of Certiorari

Robert Edward Orth
7207 Lafayette Road
Indianapolis, Indiana 46278
317-710-7831
soundsignal@comcast.net

QUESTIONS FOR REVIEW

This case concerns statutory construction and constitutional claims arising from how Petitioner (Mr. Orth) has been barred from access to the law.

1. Is the citizen in the statutory definition at 26 U.S.C. § 1402(b) an American, like the Petitioner? Do the individuals in § 1402(b) and 26 C.F.R. 1.1 share the same citizenship?

2. Is 26 C.F.R. 1.1-1 an impermissible and undue expansion of the language in 26 U.S.C. § 1? If so, has the Respondent unduly acquired any authority not manifest in statutory language?

3. Are the terms "any" and "any property" all inclusive terms when used in statutes and regulations? Is the Respondent in compliance with, or in violation of, 26 U.S.C. §§ 83, 212, 1001, 1011, and 1012 and regulations thereunder when the FMV of Petitioner's personal services are included in § 61(a) gross income?

4. Does it violate Petitioner's rights to free speech, rights to petition for redress, or rights to due process, when he's penalized $4,000.00 for petitioning for a decision upon issues that are purely statutory, whether or not a *correct* interpretation is disclosed by the Respondent or by the reviewing court? Is this still true? "Taxpayers are entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies."

QUESTIONS FOR REVIEW – Continued

(*Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1938)).

5. Are Petitioner's rights to procedural due process satisfied or intact *when*, 1) below he's received no exegesis of controlling provisions upon which he relies, 2) he's penalized thousands of dollars for posing purely legal arguments based upon tax law alone, 3) he's barred from accessing the 7th Circuit's courts until payment is made, 4) Respondent has failed for twenty-five years to formulate such an exegesis under these challenges regarding controlling provisions, 5) without the explanation he seeks the Petitioner has lost all access to how forty provisions of relevant law have operated when the Respondent demands payment under 26 U.S.C., *and* 6) despite all of this Petitioner stands to lose his U.S. passport privileges under 26 U.S.C. § 7345?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Edward Orth respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

****Begin Seventh Circuit final order entered June 20, 2018.***

****End opinion of Seventh Circuit below.***

JURISDICTION

The judgment of the court of appeals was entered on June 20, 2018. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the Appendix.

INTRODUCTION

Mr. Orth and the Respondent disagree as to the operation of provisions essential to the proper determination of tax liabilities under 26 U.S.C. Mr. Orth is an American who works hard for his living as a self employed electrician. All amounts in controversy for taxable years 2012 and 2013 were paid to Mr. Orth in arm's length transactions for the purchase of his personal services conducted within the contiguous forty-eight states. At no times during the taxable years did Mr. Orth travel to the U.S. Possessions, *e.g.*, Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, nor did he sell personal services to any person hailing from said locations as a resident or citizen of one of them. Respondent says Mr. Orth is a "citizen of the United States." The taxation of the entire workforce is governed by 26 U.S.C. § 83, a statute this Court has never taken up in relation to wages, salaries, commissions, tips, benefits, fees, or non-employee compensation. Congress can lay and collect an income tax; the executive branch cannot.

Under *precisely that pretense*, Mr. Orth asserts that the law protects him from the Respondent's demands; the law is perfect. To claim this upon that pretense evokes hatred and scorched earth from the Respondent and courts that can muster no rational response that isn't utterly void of American jurisprudence; silence (no exegesis) and monetary sanctions

abound.[1] ***Any and all emphasis*** employed herein shall be deemed to have been added.

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

See URL visited Dec. 26, 2017: https://www.irs.gov/Taxpayer-Bill-of-Rights. See also *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937) ("The taxpayers were entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies.").

> "***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 particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989)). ***The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'"*** 519 U.S., at 340."

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[1] Mr. Orth was sanctioned below, $4k for "frivolous appeal."

See *Barnhart v. Sigmon Coal Company*, 534 U.S. 438, 450 (2002).

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

> 468, 474 (1891); *Benziger v. United States*, 192 U.S. 38, 55 (1904)."

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

> "The government also fails to gain ground by emphasizing that "the statute does *not* state that the charge must vary with '*both* distance and elapsed time.'" U.S. Br. at 27. The presumption that "and" has a conjunctive meaning, however, spares legislative drafters from having to use a belt-and-suspenders approach (or, shall we say, both belt-and-suspenders approach) ***every time they deploy the term. The argument also comes perilously close to suggesting an interpretive presumption in favor of the government and against the taxpayer***. Regardless of the current status of the "traditional canon that construes revenue-raising laws against their drafter," *United Dominion Indus. v. United States,* 532 U.S. 822, 839, 121 S.Ct. 1934, 150 L.Ed.2d 45 (2001) (Thomas, J., concurring), the government has not identified any case establishing an opposite presumption. See *Bowers v. New York & Albany Lighterage Co.,* 273 U.S. 346, 350, 47 S.Ct. 389, 71 L.Ed. 676 (1927) (***"The provision is part of a taxing statute; and such laws are to be interpreted liberally in favor of the taxpayers***."); *United States v. Merriam,* 263 U.S. 179, 188, 44 S.Ct. 69, 68 L.Ed. 240 (1923) (***"If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer***."); *Benziger v. United States,*

> 192 U.S. 38, 55, 24 S.Ct. 189, 48 L.Ed. 331 (1904); *American Net & Twine Co. v. Worthington,* 141 U.S. 468, 474, 12 S.Ct. 55, 35 L.Ed. 821 (1891); *Leavell v. Blades*, 237 Mo. 695, 141 S.W. 893, 894 (1911) ("***When the tax gatherer puts his finger on the citizen, he must also put his finger on the law permitting it.***")."

See *OfficeMax, Inc. v. U.S.*, 428 F.3d 583, 594 (CA6 2005).

> "On its face, this is an attractive argument. Petitioner urges that, in view of the severity of the result flowing from a denial of suspension of deportation, we should interpret the statute by resolving all doubts in the applicant's favor. Cf. *United States v. Minker*, 350 U.S. 179, 187-188. ***But we must adopt the plain meaning of a statute, however severe the consequences***. Cf. *Galvan v. Press*, 347 U.S. 522, 528."

See *Jay v. Boyd*, 351 U.S. 345, 357 (1956). *Also* Sept. 4th and 5th, 2018 – Excerpted comments from Senate Confirmation Hearing on Brett M. Kavanaugh's Supreme Court nomination:

> Chairman Grassley: "Judge Kavanaugh, do you swear that the testimony that you're about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?"
>
> Judge Kavanaugh: "I do. . . . For twelve years I've been a judge on the U.S. Court of Appeals for the D.C. Circuit. I have written more

than three hundred opinions and handled more than 2000 cases. I've given my all in every case. I am proud of that body of work and I stand behind it. I tell people, don't read about my judicial opinions, read the opinions. My judicial philosophy is straight forward. A judge must be independent, and ***must interpret the law*** not make the law. A judge ***must interpret statutes as written***. A judge ***must interpret the Constitution as written, informed by history, tradition, and precedent***. I do not decide cases on personal or policy preferences. I am not a pro-plaintiff or pro-defendant judge. I am not a pro-prosecution or pro-defense judge. ***I am a pro-law judge***. The Supreme Court must never, never be viewed as a partisan institution. The Justices of the Supreme Court do not sit on opposite sides of an aisle. They do not caucus in separate rooms. If confirmed to the Supreme Court ***I will keep an open mind*** in every case. I do equal right to the poor and to the rich. I will always strive to preserve the Constitution of the United States, and the American rule of law. Thank you, Mr. Chairman."

Chairman Grassley: "Have you ever followed precedent of the Supreme Court when doing so conflicted with your personal beliefs?"

Judge Kavanaugh: "My personal beliefs are not relevant to how I decide cases. ***If you walk into my courtroom and you have the better legal arguments, you will win***."

Tax law is an exception to all of this. While many others have made dozens of challenges of an identical *nature* and were not libeled as buffoons and sanctioned, those same challenges that concern the provisions Mr. Orth reads as protective, as stated, evokes an ire unique to tax law and to challenges to the privileged Respondent's whims. In tax cases such challenges are "outlandish theories," but nobody can simply say why, which violates Mr. Orth's right to due process.

The Respondent and the courts have, since 1994, maintained a wall between the public and the provisions Mr. Orth insists are proof the Respondent's determinations are incorrect. A regulation deviates from statute, a statutory definition lacks its due consideration, a controlling statute is being misenforced – these are standard fare in this Court and below. However, when Mr. Orth tried to do this he was severely penalized without any attempt to explain how the provisions upon which he relied had operated and do operate *ala*, "That's outlandish but we can't say why." This violates due process.

STATEMENT OF THE CASE

Respondent's refusal to mention the language of controlling provisions, and that of the court below, bar Mr. Orth from resolution of this matter and places the IRS in total control of his affairs, as it relates to income taxation. The court below afforded Mr. Orth only the

stigma of tax protester while calling his statutory claims "outlandish."

Factual background and Proceedings Below.

Taxable years in controversy are 2012 and 2013. Amounts in controversy relate to alleged liabilities under 26 U.S.C. § 1 and § 1401. Mr. Orth does not challenge Respondent's facts, here, but rather makes only statutory claims relative to alleged liabilities.

In U.S. Tax Court (*Orth v. CIR*, #18049-16) the Petitioner, Mr. Orth, was not penalized for frivolity due to his having forgone raising the statutory arguments he favors out of the fear and knowledge that his provisions are off limits. Mr. Orth expressly reserved his key issues for appeal and was not contradicted by Tax Court when he explained this in his petition. He reserved claims #1-3 of this petition but put forth the following arguments in Tax Court:

> **A. The Respondent's refusal or failure to apply relevant provisions, and to conceal through silence the correct interpretation and application of relevant provisions, renders its conclusions or "determination" under 26 U.S.C. § 6212 an unlawful taking in violation of the 5th Amdt. to the U.S. Constitution that must be set aside or otherwise dismissed.**
>
> **B. The subject tax or taxes are not imposed by clear and unequivocal**

language, which requires dismissal of the Respondent's § 6212 determination.

C. U.S. Tax Court's refusal to interpret relevant provisions, and its insistence upon imposing extremely severe sanctions upon those who seek such review, constitutes an invalid basis for Petitioner's loss of liberty pursuant to 26 U.S.C. § 7345. Any refusal on the part of this court to disclose its interpretation of relevant provisions upon a finding against the Petitioner violates Petitioner's right to procedural due process prior to the loss of a liberty interest.

Tax Court's final Order and decision is dated October 12, 2017. Mr. Orth timely filed Notice of Appeal on November 24, 2017 with the Seventh Circuit Court of Appeals where he raised for review claims #1-3 herein. Although his arguments were rooted purely in relevant law he was offered no explanation as to how his interpretation was mistaken, and was penalized with $4k in sanctions for a frivolous appeal. Final Order was dated June 20, 2018. Mr. Orth is now barred from access to federal courts on the Seventh Ciruit until he's paid this penalty for his belief in the law.

ISSUES PRESENTED FOR REVIEW

1. **Is the citizen in the statutory definition at 26 U.S.C. § 1402(b) an American, like the Petitioner? Do the individuals in § 1402(b) and 26 C.F.R. 1.1 share the same citizenship?**

Mr. Orth views statutory definitions as essential to understanding the parameters and operation of the law to which such a definition applies.

> "Regardless, even were we to grant the Attorney General's views "substantial weight," ***we still have to reject his interpretation***, for ***it conflicts with the statutory language*** discussed *supra,* at 940. The Attorney General, echoed by the dissents, tries to overcome that language by relying on other language in the statute; in particular, the words "partial birth abortion," a term ordinarily associated with the D&X procedure, and the words "partially delivers vaginally a living unborn child." Neb.Rev.Stat.Ann. § 28-326(9) (Supp. 1999). But these words cannot help the Attorney General. ***They are subject to the statute's further explicit statutory definition,*** specifying that both terms include "delivering into the vagina a living unborn child, or a substantial portion thereof." *Ibid.* When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene,* 481 U.S. 465, 484-485 (1987) ("***It is axiomatic that the statutory definition of the term excludes unstated meanings of that term***"); *Colautti v. Franklin,* 439 U.S., at

> 392-393, n.10 ("As a rule, 'a definition which declares what a term "means" . . . excludes any meaning that is not stated' "); *Western Union Telegraph Co. v. Lenroot,* 323 U.S. 490, 502 (1945); *Fox v. Standard Oil Co. of N. J.,* 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p.152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," *post,* at 998 (Thomas, J., dissenting), leads the reader to a definition. ***That definition does not include*** the Attorney General's restriction – "the child up to the head." Its words, "substantial portion," indicate the contrary."

See *Stenberg v. Carhart*, 530 U.S. 914, 942-43 (2000).

> *"**Metropolitan was subject*** to Title VII, however, ***only if, at the time of the alleged retaliation, it met the statutory definition of "employer," to wit***: "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U.S.C. Section(s) 2000e(b). . . . ***Statutes must be interpreted, if possible, to give each word some operative effect.***"[2]
>
> " . . . Thus, ***Congress did not reach every transaction*** in which an investor actually relies on inside information. ***A person avoids***

---

[2] See *Walters v. Metropolitan Enterprises, Inc. et al.*, 519 U.S. 202 (1997).

> ***liability if he does not meet the statutory definition of an "insider*[.]"**[3]

A portion of the amount in controversy is an alleged liability for the tax imposed by 26 U.S.C. § 1401 (SS tax on self employment "income"; it's an income tax). The Social Security Act of 1935 and statutory definitions relative to Social Security obviously act to direct 26 U.S.C. chapters 2, 21, and 23 away from "citizens of the United States," *a fortiori*, away from Mr. Orth:

> § 1402(b) . . . ***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 chapter be considered to be a nonresident alien individual.***
>
> 26 C.F.R. 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa . . . ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have . . . do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an***

[3] See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972).

> ***individual who is not a citizen of the United States but who is a resident of 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.
>
> § 7655 Cross references. –
>
> (a) Imposition of tax in possessions. – For provisions imposing tax in possessions, see –
>
> (1) Chapter 2, relating to self-employment tax;
>
> (2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act.

And in Social Security administration legislation Congress named a beneficiary:

> 42 U.S.C. § 411(b)(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***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 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).[4]

Congress says that Social Security under chapters 2 and 21 are the same tax imposed by 1939 Tax Code § 3811.

> § 7651(4) Virginia Islands. –
>
> (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***.
>
> 1939 Code § 3811 Collection of Taxes in Puerto Rico and Virgin Islands.
>
> (a) Puerto Rico.
>
> (b) Virgin Islands.[5]

See also § 211 of The Social Security Act, Pub.L. 74-271, 49 Stat. 620, enacted August 14, 1935, now codified as 42 U.S.C. ch. 7 ("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

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

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

subsection, be considered to be a nonresident alien individual.").

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

See *Russello v. United States,* 464 U.S. 16, 23 (1983).

Compare § 1402(b) to 26 C.F.R. 1.1. When the Respondent calls Mr. Orth the latter it is stating that he *is not* the former; Mr. Orth cannot be both. Even if Mr. Orth resided in a U.S. possession, the fact that U.S. citizens are expressly excluded from 26 U.S.C. ch.2 would still preclude the application of that chapter to him. The scope of the legislation that imposes the tax at 26 U.S.C. § 1401 does not reach Mr. Orth, so that portion of the amount in controversy is not owed to the Respondent.

2. Is 26 C.F.R. 1.1-1 an impermissible and undue expansion of the language in 26 U.S.C. § 1? If so, has the Respondent unduly acquired any authority not manifest in statutory language?

Portions of the amount in controversy is an alleged liability under 26 U.S.C. § 1; the graduated income tax. Congress is keenly aware of the existence of citizens of the United States, and knows to act when it seeks to exclude them from any particular tax. (See 26 U.S.C.

§§ 1402(b), 3121(e), 3306(j); 42 U.S.C. § 411(b)(2); SS Act of 1935 § 211, all quoted *supra*).

In 26 U.S.C. ch.1 Congress has named no subject of the tax, and has provided no definition to say that "citizens of the United States" are the subject of the § 1 tax. The Respondent (Sec. of Treas.) saw this void and promulgated 26 C.F.R. 1.1 (T.D. 6500, 25 FR 11402, Nov. 26, 1960) which identifies such citizens as the subject of the § 1 tax:

> 26 C.F.R. 1.1-1 Income tax on individuals.
>
> (a) General rule.
>
> (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***.
>
> (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.
>
> (c) Who is a citizen. ***Every person born or naturalized in the United States and subject to its jurisdiction is a citizen***.[6]

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[6] 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.

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

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

The court below acknowledges that 26 C.F.R. 1.1 identifies the subject of the § 1 tax, and Mr. Orth charges that 26 C.F.R. 1.1 *alone* identifies the specific subject of the tax, which was held to be "outlandish." Respondent's reply brief in the proceedings below made no reference whatsoever to this claim or to these provisions.

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

See *FDA v. Brown & Williamson, id.* at 161.

> "Finally, the Government points to the fact that the Treasury Regulations relating to the statute purport to include the pick-up man

> among those subject to the § 3290 tax, and argues (a) that this constitutes an administrative interpretation to which we should give weight in construing the statute, particularly because (b) section 3290 was carried over *in haec verba* into § 4411 of the Internal Revenue Code of 1954. We find neither argument persuasive. ***In 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 accompanied by any congressional discussion which throws light on its intended scope. In such circumstances we consider the 1954 reenactment to be without significance. *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 431."

See *United States v. Calamaro*, 354 U.S. 351, 358-59, 77 S.Ct. 1138 (1957). See also, *Water Quality Ass'n v. United States*, 795 F.2d 1303 (CA7 1986), where, citing and quoting *Calamaro*, the 7th Cir. added at p.1309:

> ***"It is a basic principle of statutory construction that courts have no right first to determine the legislative intent of a statute and then, under the guise of its***

> ***interpretation, proceed to either add words to or eliminate other words from the statute's language***. *DeSoto Securities Co. v. Commissioner,* 235 F.2d 409, 411 (7th Cir. 1956); see also *2A Sutherland Statutory Construction* § 47.38 (4th Ed. 1984). Similarly, ***the Secretary has no power to change the language of the revenue statutes because he thinks Congress may have overlooked something.***"

Id. at 1309.

> "***But the section contains nothing to that effect***, and, therefore, ***to uphold*** [IRS Commr's] addition to the tax ***would be to hold that it may be imposed by regulation, which, of course, the law does not permit***. *U.S. v. Calamaro*, 354 U.S. 351, 359; *Koshland v. Helvering*, 298 U.S. 441, 446-67; *Manhattan Equipment Co. v. Commissioner*, 297 U.S. 129, 134."[7]

Mr. Orth charges that 26 C.F.R. 1.1-1 is invalid for the fact that it impermissibly "add[s] to the statute of something which is not there." (See *U.S. v. Calamaro, supra*, p.358-59). Had this impermissible and unconstitutional (Amdt. 16) promulgation not occurred, the law is void of any reference to citizens of the United States as the subject of the income tax imposed at § 1; a regulation identifies the subject of the tax. (*Vallone, supra*). Inasmuch as the subject ch.1 deficiency arises out

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[7] See *C.I.R. v. Acker*, 361 U.S. 87, 92 (1959).

of purely regulatory authority, it must be declared invalid.

3. Are the terms "any" and "any property" all inclusive terms when used in statutes and regulations? Is the Respondent in compliance with, or in violation of, 26 U.S.C. §§ 83, 212, 1001, 1011, and 1012 and regulations thereunder when the FMV of Petitioner's personal services are included in § 61(a) gross income?

Because Mr. Orth's cost is defined by all inclusive terms – "any" – "any property paid" – "the amount (if any) paid" – he includes in his cost property within which he has no basis. Respondent prohibits this inclusion but cannot reconcile that fact with the all-inclusive language of these provisions.

"Section 83(a) explains how property received in exchange for services is taxed."[8] "At the heart of this case is I.R.C. § 83, which governs the taxation of property transferred in connection with the performance of services."[9] "Section 83 provides for the determination of the amount to be included in gross income and the timing of the inclusion when property is transferred to

[8] See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).

[9] See *Gudmundsson v. U.S.*, 634 F.3d 212 (CA2 2011).

an employee or independent contractor in connection with the performance of services."[10]

> 26 U.S.C. § 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).
>
> 26 U.S.C. § 83 "Property Transferred in Connection with the Performance of Services.
>
> (a) If, in connection with the performance of services, property is transferred . . . , ***the excess of –***
>
> (1) ***the fair market value of such property . . . over***,
>
> (2) ***the amount (if <u>any</u>) paid*** for such property . . . ***shall be included in the gross income*** of the person who performed such services[.]"
>
> ***"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,***

[10] See IRS' Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, Revenue Ruling 2007-19.

> ***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 for whom the services were performed, ***including independent contractors*** of the transferor. *Cohn v. Commissioner*, 73 T.C. 443, 446 (1979)."[11]

At no time is an American afforded such an opportunity to view or observe the Respondent's dissection and interpretation, its *exegesis*, of § 83 and its implementing regulations, as they relate to common forms of compensation, *i.e.*, wages, fees, commissions, tips, salaries, self employment compensation. This is the equation all parties agree applies to calculate Mr. Orth's cost:

> 26 C.F.R. 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."
>
> 26 C.F.R. 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

[11] See *Pagel, Inc. v. Commissioner*, 91 TC 200, 204-05 (USTC #34122-85, 1988).

transferee ***shall be determined under section 1012 and the regulations thereunder***."

26 C.F.R. 1.1012-1(a) " . . . The cost is the amount paid for such property in ***cash or other property***."

26 C.F.R. 1.1011-1 "Adjusted basis. – The adjusted basis . . . is the cost or other basis prescribed in ***section 1012***[.]"

26 C.F.R. 1.1001-1 Computation of gain or loss.

(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.***

The law makes clear that *any* property is a cost, and it is not Mr. Orth's fault that this is clearly established law that applies to him. Nor is it his fault that Respondent (Sec. of Treas.) has chosen to let these provisions remain untouched since 1993 when this connection was first made in IRS administrative interactions. Only when these provisions have properly operated is one allowed to say "gross income," and then only in relation to an *excess over the amount (if any) paid* for the compensation, lest an IRS agent or two get fired. (26 U.S.C. § 7214).

"Any" is all inclusive, according to the Respondent's five victories in this Court. (See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (**1989**); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (**1994**); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (**1997**); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (**2002**) (citing *Gonzalez* and *Monsanto*); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228, 128 S.Ct. 831, 835-36 (**2008**)). Mr. Orth insists upon this standard in this case and in all dealings with the Respondent, but here the Respondent will insist upon the opposite. Here, the Respondent will seek to uphold its *arbitrary* choice to simply exclude from cost property within which one has no basis.

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

Petitioner's primary argument is that section 83, Property Transferred in Connection with the Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, 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 value.***"

***End quote** from *Talmage* in U.S. 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) entered April 17, 1996, denying his motion for reconsideration. ***We affirm, based on the reasoning of the tax court.***"

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

In *Talmage*'s pleadings no decisions on how to interpret "any" were cited. Respondent affirmed this decision's significance in Tax Court by concurring with Mr. Orth that this is the foundation for Respondent's disregard for 26 U.S.C. § 83. *Nowhere* does the law provide for such an exception to the all inclusive language that governs the taxation of Mr. Orth's compensation; the exclusion is arbitrary. The criminal nature of this

conduct aside, this mere *policy* also constitutes the creation of the subject of an income tax by the executive branch, upheld by the judiciary, in violation of the 16th Amdt. which allows only Congress to lay and collect an income tax. This would include the income tax imposed by 26 U.S.C. § 1401 which expressly instructs that ch.1 provisions be applied to calculate a ch.2 liability. (See [12]).

This is Mr. Orth's argument, but the reasons for disagreement remain a mystery. Respondent's determinations *under both* § 1 and § 1401 reflect a failure to properly apply the provisions of 26 U.S.C. § 83, 212, 1001, 1011, and 1012, and the regulations thereunder, and is therefore invalid.

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[12] 26 C.F.R. 1.1402(a)-2(a). Computations of net earnings from self-employment. –

(a) General rule. " . . . for the purpose of ascertaining his net earnings from self-employment, are to be determined by reference to the provisions of law and regulations applicable with respect to the taxes imposed by sections 1 and 3."

4. **Does it violate Petitioner's rights to free speech, rights to petition for redress, or rights to due process, when he's penalized $4,000.00 for petitioning for a decision upon issues that are purely statutory, whether or not a *correct* interpretation is disclosed by the Respondent or by the reviewing court? Is this still true? "Taxpayers are entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." (*Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1938)).**

Every time Mr. Orth reads the provisions relied upon herein he comes to precisely the conclusions he's articulated in this petition. This means that for every year he's denied an exegesis of controlling provisions he must mount a campaign all of the way to this Court to see if the law operates as he sees it. Congress has expressly prohibited the making of exactions:

> 26 C.F.R. 601.106(f)(1) "Rule 1. ***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 of the 5th Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty 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."

> § 7214 Offenses by Officers and Employees of the United States.
>
> "(a) Unlawful Acts of Revenue Officers or Agents. – Any officer or employee of the United States acting in connection with any revenue law of the United States –
>
> (1) ***who is guilty of any extortion or willful oppression under color of law; or***
>
> (2) ***who knowingly demands other or greater sums than are authorized by law***, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or . . .

shall be dismissed from office or discharged from employment and, upon conviction thereof, ***shall be fined*** not more than $10,000, ***or imprisoned*** not more than five years, ***or both***."

When applying the law to fact is naturally paramount, to stifle with pecuniary brutality all discussion of controlling provisions invalidates the Respondent's determination *in toto*, if precedent has any role to play.

> "This Court has held time and again: "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Regan v. Time, Inc.*, 468 U.S. 641, 648-649 (1984); *Simon & Schuster, Inc. v. Member of the N. Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991); *Arkansas Writers' Project*, 481 U.S., at 230. The county offers only one justification for this ordinance:

> raising revenue for police services. While this undoubtedly is an important government responsibility, it does not justify a content-based permit fee. See *id.*, at 229-231."

See *Forsyth County v. Nationalist Movement*, 505 U.S., 123, 134-36 (1992).

> "And as we have recently admonished, the Government may not penalize an individual for "robustly exercis[ing]" his First Amendment rights. *Davis v. Federal Election Comm'n*, 554 U.S. 724, 739, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008)."

See *McCutcheon v. Federal Election Comm'n*, 572 U.S. __, 134 S.Ct. 1434, 1449 (2014).

The law plainly permits the making of statutory arguments and constitutional challenges to policy. Mr. Orth watches as others do it constantly. "To punish a person for doing what the law plainly permits is a due process violation of the most basic sort." (See *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); *U.S. v. Goodwin*, 457 U.S. 368, 372 (1982)). Mr. Orth's reliance upon solely relevant and controlling provisions of law shows a clear intent to not waste the resources of the court below, and he's under the impression he proffered precisely the sort of claims courts are supposed to welcome. "[I]t [is] the judiciary's duty "to say what the law is." *Marbury v. Madison*, 1 Cranch. 137, 177 (1803) (Marshal, C.J.)."[13]

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[13] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

A tax must be imposed by clear and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar Refining v. McClain*, 192 U.S. 397, 416 (1904); *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Smietanka v. First Trust & Savings Bank*, 257 U.S. 602, 606 (1922); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929); *Crooks v. Harrelson*, 282 U.S. 55 (1930); *Burnet v. Niagra Falls Brewing Co.*, 282 U.S. 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932); *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Hassett v. Welch*, 303 U.S. 303, 314 (1938); *U.S. v. Batchelder*, 442 U.S. 114, 123 (1978)).

Instead, Respondent's been given a pass on having to consider the law at all, with governing provisions secreted away while Mr. Orth's estate is threatened with a ransacking. Clear explanations simply have to be in the Respondent's possession. Mr. Orth is being forced to speculate over civil matters right now, but the criminal sanctions must also be considered. (See 26 U.S.C. § 7201 Willful tax evasion, and § 7203 Willful failure to file). Mr. Orth charges that sanctions imposed for arguing strictly the law and U.S. Constitution violates due process even if he's obviously wrong, it violates rights to free speech, and that any failure to *say what the law is* (providing an exegesis of controlling provisions) violates rights to due process and to petition for redress. (U.S. Constitution Amdt. 1 and 5).

5. **Are Petitioner's rights to procedural due process satisfied or intact *when*, 1) below he's received no exegesis of controlling provisions upon which he relies, 2) he's penalized thousands of dollars for posing purely legal arguments based upon tax law alone, 3) he's barred from accessing the 7th Circuit's courts until payment is made, 4) Respondent has failed for twenty-five years to formulate such an exegesis under these challenges regarding controlling provisions, 5) without the explanation he seeks the Petitioner has lost all access to how forty provisions of relevant law have operated when the Respondent demands payment under 26 U.S.C., *and* 6) despite all of this Petitioner stands to lose his U.S. passport privileges under 26 U.S.C. § 7345 unless he begins payment under a plan?**

Much more than money is at stake in this case. In the event of an unpaid "tax" controversy in excess of $50k, Mr. Orth can lose his U.S. passport privileges.

> 26 U.S.C. § 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 denial, revocation, or limitation*** ***of a passport*** pursuant to section 32101 of the FAST Act.

(b) Seriously delinquent tax debt. –

(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 –

(A) which has been assessed,

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

(C) with respect to which –

(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

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

(2) Exceptions. – Such term shall not include –

(A) a debt that is being paid in a timely manner pursuant to an agreement to which the individual is party under section 6159 or 7122, and

(B) a debt with respect to which collection is suspended with respect to the individual –

(i) because a due process hearing under section 6330 is requested or pending, or

(ii) because an election under subsection (b) or (c) of section 6015 is made or relief under subsection (f) of such section is requested.

The Respondent enjoys the presumption that everything it demands is a "tax," a term hiding among prohibited provisions and supported by the reputation of the IRS, the DOJ, and the courts. This § 7345 suspension is violative if imposed without a review of the relevant law to prove it has in fact operated to impose the amounts now sought by the Respondent.

> "The hearing, moreover, must be a real one, not a sham or a pretense."

See *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 164 (1951) (invalidating as arbitrary USAG's defamatory listing of JAFRC on list of purported Communists, citing *Palko* v. *Connecticut,* 302 U.S. 319, 327 (1937)).

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

McGrath, *id.* at 168. ***And*** –

> "Due process also was violated by the City's unfortunate reaction to the Ciebien family's threat of adverse publicity, which infused the disciplinary procedures with a deliberate, illegitimate bias. ***Due process requires that a***

> ***hearing "'must be a real one, not a sham or a pretense.'"***

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

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

See *Connecticut v. Doehr*, 501 U.S. 1, 14 (1991). ***And*** –

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

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

Petitioner charges that denial of U.S. passport privileges, obtained through imposing monetary penalties to keep the law off limits, is a plain denial of procedural due process to which he has a right. For this reason the subject determination of income tax liabilities and sanctions imposed below should be invalidated or otherwise nullified.

REASONS FOR GRANTING THE WRIT

Petitioner's statutory claims (#1 through #3) are simple enough, and Respondent has had them since 1994 but has failed to put them on the frivolous arguments list. Executive and judicial policy is to deny redress relative to provisions cited herein.

1. The core of this case is merely a matter of statutory interpretation but all courts refuse to interpret the governing provisions cited herein. All Americans are adversely affected by this policy.

2. There is no list of laws the average American should ignore, and the Respondent failed to even mention key provisions in its Opening Brief. When Petitioner relies upon the law he gets penalized for it without a clue as to how he's mistaken, administratively, in Tax Court, and on appeal.

3. This Court cannot avoid the appearance of partisanship when the taxman is allowed to skirt having to face the law.

4. This Court has never heard a case about 26 U.S.C. § 83 and the average wage or fee, yet it explains how to tax the entire workforce; it is officially off limits if this petition is denied.

CONCLUSION

When a court acts to bar discussion of the law for the benefit of the taxman "partisan" is the least of

appearances. If the law operated against the Petitioner the Respondent could prove it. The record below is barren of an alternative exegesis of the provisions relied upon by the Petitioner, but is replete with vexatious diatribe. Petitioner is entitled to a memorandum decision upon his claims, and penalties for purely legal arguments not only violate Petitioner's rights as alleged herein, but they make the judiciary look tyrannical.

Respectfully submitted this 17th day of September, 2018.

Robert Edward Orth
7207 Lafayette Road
Indianapolis, Indiana 46278
317-710-7831
soundsignal@comcast.net