

Appendix A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60582

Summary Calendar

WALTER C. LANGE,

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

Appeal from a Decision of the

United States Tax Court TC No. 11492-17

Before REAVLEY, JONES, and HIGGINSON, Circuit
Judges. PER CURIAM:*

Walter Lange appeals a decision of the Tax Court penalizing him for frivolous tax submissions for tax years 2009 and 2012 and sanctioning him for frivolous litigation in the Tax Court itself. *See* 26 U.S.C. §§ 6702(a), 6673(a). We review the underlying liability *de novo* and the Tax Court's sanctions for abuse of discretion. *Jones v. C.I.R.*, 338 F.3d 463, 466 (5th Cir. 2003). The Tax Court imposed the frivolous submission penalties on Lange because he reported taxable pension distributions on his tax forms but then asserted he had no tax liability. These actions, coupled with Lange's "desire to delay or impede the administration of Federal

tax laws” evident from his baseless arguments against tax liability, are sufficient to trigger penalties under § 6702. His arguments likewise justify the sanction imposed by the Tax Court under § 6673. We neither explain those arguments nor rebut them in detail, lest we thereby “suggest that these arguments have some colorable merit.” *Crain v. C.I.R.*, 737 F.2d 1417, 1417 (5th Cir. 1984).

Because Lange has reiterated his sanctionable arguments on appeal, the Commissioner asks us to sanction Lange under 26 U.S.C. § 7482(c)(4) and Rule 38 of the Federal Rules of Appellate Procedure. We have done so under similar circumstances. *See Young v. C.I.R.*, 551 F. App’x 229, 231 (5th Cir. 2014) (imposing a sanction of \$8,000); *Stearman v. C.I.R.*, 436 F.3d 533, 540 (5th Cir. 2006) (\$12,000); *Wallis v. C.I.R.*, 203 F. App’x 591, 594 (5th Cir. 2006) (\$8,000). The Commissioner seeks a sanction of \$8,000, which we hold is warranted under the circumstances.

The judgment of the Tax Court is AFFIRMED.
The Commissioner’s Motion for Sanctions is GRANTED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60582

WALTER C. LANGE,
Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee

Appeal from a Decision of the
United States Tax Court

ON PETITION FOR REHEARING EN BANC
(Opinion - 1/24/19, 5 Cir., _____, _____ F.3rd
_____)

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:

- (✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. And 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.
- () Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. And 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/S/ _____

UNITED STATES CIRCUIT JUDGE

Appendix C

UNITED STATES TAX COURT

WASHINGTON, DC 20217

WALTER C. LANGE,

Petitioner(s),

v.

Docket No. 11492-17 L.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Judge James S. Halpern at Dallas, Texas, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

(Signed) James S. Halpern

Judge

Dated: Washington, D.C.

April 27, 2018

SERVED APR 27 2018

Bench Opinion by Judge James S. H.alpern

April 17, 2018

Walter C. Lange v. Commissioner of Internal Revenue

Docket No. 11492-17L

The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral findings of fact and opinion.

The oral findings of fact and opinion shall not be relied upon as precedent in any other case.

This bench opinion is made pursuant to the authority granted by section 7459(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court Rules of Practice and Procedure.

Unless otherwise indicated, all section references are to the Internal Revenue code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

The parties have entered into a stipulation of facts, which is incorporated herein by this reference. At the time the petition was filed, petitioner lived in Texas.

This is a collection due process case under section 6330. By notice of determination dated May 2, 2017, respondent determined to sustain notices of intent to levy to collect from petitioner section 6702 frivolous filing penalties assessed against petitioner for 2007, 2009, and 2012. Respondent concedes that no penalty is

due for 2007. He further concedes that only one penalty is due for each of 2009 and 2012.

A civil penalty for filing frivolous returns may be assessed against a taxpayer under section 6702(a) if three requirements are met. First, the taxpayer must file a document that purports to be an income tax return. Second, the purported return must lack the information needed to gauge the substantial correctness of the self- assessment or contain information indicating the self-assessment is substantially incorrect. Third, the taxpayer's position must be frivolous or demonstrate a desire to delay or impede the administration of Federal income tax laws.

Respondent satisfied the first element by showing that petitioner submitted documents for 2009 and 2012 that purported to be income tax returns, i.e., the Forms 1040 submitted for each year. Petitioner attached Forms 4852 to each Form 1040, reporting, among other amounts, gross distributions of \$23,892.60 from Employee Retirement System of Texas (System).

Respondent satisfied the second element as well. The gross distributions from System are pension amounts. Pension amounts are items of gross income reportable on line 16a of Form 1040. Petitioner did not report pension income on either Form 1040. Petitioner attached explanations to his Forms 1040 stating that he filed the Forms 4852 to correct errors by the payers because he received no payments "which were connected to the performance of the functions of a public office, or otherwise constituted gains, profit or income within the meaning of relevant law." Neither of the Forms 1040

contained information on which the substantial correctness of the self-assessment might be determined.

Finally, respondent satisfied the third element by showing that the purported returns reflect frivolous positions. IRS Notice 2010-33, 2010 I.R.B. 609., includes among its list of frivolous positions, positions that have been determined to be frivolous in a published opinion of the United States Tax Court. This Court has held that incomplete returns showing \$0 income items attributable to incorrect Forms 4852 attached may be subject to a frivolous return penalty. See, e.g., Grunsted v. Commissioner, 136 T.C. 455, 459 (2011).

Petitioner's argument that he has not seen evidence of assessment of the penalties is without merit. As we have said: Section 6330(c)(1) does not require the Appeals officer to rely on any particular document in satisfying the verification requirement and does not require that the Appeals officer actually give the taxpayer a copy of the verification upon which he or she relied. Walker v. Commissioner, T.C. Memo. 2018-22.

Petitioner's argument that respondent may not levy on him to collect taxes is also without merit. See sec. 6331.(a). The present internal Revenue Code was enacted by Congress in 1986. See Pub. L. 99-514, 100 Stat. 2085. Petitioner has failed to show that Revised Statutes sec. 3185 (1876) has any relevance to this case.

Petitioner advanced meritless tax-protester arguments to report zero wages on his purported returns. We therefore find that petitioner is liable for

the frivolous return penalties under section 6702 because all of the elements have been met.

We now address whether it is appropriate for us to impose a penalty against petitioner on our own motion under section 6673. We have warned petitioner of this possibility in our order denying his motion for summary judgment dated April. 9, 2018. That section authorizes the Tax Court to require a taxpayer to pay to the United States a penalty of up to \$25,000 whenever it appears that proceedings have been instituted or maintained primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. The purpose of section 6673, like that of section 6702, is to compel taxpayers to think and to conform their conduct to settled tax principles.

Petitioner's argument that, as a Texas resident, he is not geographically within the United States for purposes of Federal taxation is a frivolous argument, needing no citation of authority to refute it.

Likewise, his argument that he is not a person liable to pay tax within the meaning of section 6331 is without merit.

Petitioner has burdened respondent and this Court with his meritless challenges to the section 6702 penalty. We shall impose on petitioner a penalty under section 6673(a)(1) of \$2,500.

That concludes this bench opinion. (Whereupon, at 12:55 p.m., the above-entitled matter was concluded.)

UNITED STATES TAX COURT

WASHINGTON, DC 20217

WALTER C. LANGE,

Petitioner(s),

v.

Docket No. 11492-17 L.

COMMISSIONER OF INTERNAL REVENUE,

Respondent .

DECISION

Pursuant to the Opinion of the Court as set forth in the pages of the transcript of the proceedings before Judge Jatnes S. Halpern in Dallas, Texas on April 16, 2018, containing oral findings of fact and opinion, it is

ORDÉRED and DECIDED that the collection action as determined in the Notice of Determination Concerning Collection Action(s) under I.R.C. § 6320 and/or 6330 issued to petitioner on May 2, 2017, with respect to civil penalties assessed against him for the taxable year 2007 is not sustained;

That petitioner's liability for the I.R.C. § 6702(a) penalties assessed against him for the taxable year 2007 is as follows:

TAX YEAR	CIVIL PENALTY I.R.C. § 6702(a)	ASSESSMENT DATE
2007	\$0.00	February 22, 2016
2007	\$0.00	February 22, 2016

That the collection action as determined in the Notice of Determination Concerning Collection Action(s) under I.R.C. § 6320 and/or 6330 issued to petitioner on May 2, 2017, with respect to civil penalties assessed against him for the taxable year 2009 is not sustained as to the February 22, 2016 assessment (comprised of two \$5,000 civil penalties) but is sustained as to the April 25, 2016 assessment;

That petitioner's liability for the I.R.C. § 6702(a) penalties assessed against him for the taxable year 2009 is as follows:

TAX YEAR	CIVIL PENALTY I.R.C. § 6702(a)	ASSESSMENT DATE
2009	\$0:00	February 22, 2016
2009	\$5,000.00	April 25, 2016

That the collection action as determined in the Notice of Determination Concerning Collection Action(s) under I.R.C. § 6320 and/or 6330 issued to petitioner on May 2, 2017, with respect to the civil penalty assessed against him for the taxable year 2012 is sustained;

That petitioner's liability for the I.R.C. § 6702(a) penalty assessed against him for the taxable year 2012 is as follows:

TAX YEAR	CIVIL PENALTY I.R.C. § 6702(a)	ASSESSMENT DATE
2012	\$5,000.00	June 20, 2016

That petitioner is liable for a penalty under I.R.C. § 6673(a)(1) in the amount of \$2,500.00.

James S. Halpern, Judge Entered: APR 27 2018