

No.

IN THE
Supreme Court of the United States

Richard E. Boggs,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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September 10, 2020

QUESTIONS PRESENTED

- 1) Did the Internal Revenue Service (IRS) deprive the petitioner of his Constitutional Fifth Amendment right to due process when it failed to offer a basis for its “determination¹” that the petitioner was not entitled to claim “Exempt” on his W-4 Withholding Certificate, signed under penalty of perjury, prior to the taking of petitioner’s property?
- 2) Did the IRS and the UNITED STATES deprive the petitioner of the operation of subject provisions² relied upon in order to make an unspecified “determination” as to the petitioner’s tax liability?

¹ A “determination” must be the result of a consideration of all relevant facts and statutes. See *Hughes v. U.S.*, 953 F.2d 531 (CA9 1992); *Portillo v. Comm'r of IRS*, 932 F.2d 1128 (CA5 1991); *Elise v. Connell*, 908 F.2d 521 (CA9 1990); *Jensen v. Comm'r of IRS*, 835 F.2d 196 (CA9 1987); *Scar v. Comm'r of IRS*, 814 F.2d 1363 (CA9 1987); *Benzvi v. Comm'r of IRS*, 787 F.2d 1541 (CA11 1986); *Maxfield v. U.S. Postal Service*, 752 F.2d 433 (1984); *Weimerskirch v. Comm'r of IRS*, 596 F.2d 358, 360 (CA9 1979); *Carson v. U.S.*, 560 F.2d 693 (1977); *U.S. v. Janis*, 428 U.S. 433, 442 (1975); *Alexander v. “Americans United” Inc.*, 416 U.S. 752, 758-770 (1973); *Pizzarello v. U.S.*, 408 F.2d 579 (1969); *Terminal Wine*, 1 B.T.A. 697, 701-02 (1925); *Couzens*, 11 B.T.A. 1140, 1159, 1179.

² For the purposes of this petition the term “subject provisions” shall be deemed to mean 26 USC §§ 1, 61(a), 83(a), 212, 1001, 1011, 1012, 1402(b), 3121(e), 3306(j), 3402(n), 6201, 6671(b), 7343, 7608, 7621, 7651(4)(A), 7655; 42 USC § 411(b)(2); 26 CFR 1.1-1(a) – (c), 1.83-3(e), (f), (g), 1.83-4(b)(2), 1.1001-1(a), 1.1011-1(a), 1.1012-1(a), 1.1401-1(a), 1.1402(a)-2(a), 1.1402(b)-1(d), 31.0-2(a)(1), 31.3121(e)-1(b), 301.6201-1(a), and 602.101. (See Appendix A19)

RELATED CASES

- *Boggs v. UNITED STATES*, No. 3:18-cv-1915, U.S. District Court for the District of South Carolina. Judgement entered Sept. 4, 2019. (See Appendix A31 – A39)
- *Boggs v. UNITED STATES*, No. 19-2084, U.S. Court of Appeals for the Fourth District. Judgment entered May 18, 2020. (See Appendix A1 – A3)

RULE 29.6 DISCLOSURE STATEMENT

Petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard E. Boggs (“Boggs”) respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Fourth Circuit (“USCA4”).

OPINIONS BELOW

The opinion of the court of appeals is unpublished and appears in the Appendix at page A1.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 2020. (Appendix at page A1). A timely petition for rehearing was filed but denied on May 18, 2020. (Appendix at page A3). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AMENDMENT, STATUTES AND REGULATIONS INVOLVED

Provisions of the United States Constitution involved include Amendment V. Provisions of the U.S. Code, Title 26 involved include 5 U.S.C. § 706, 26 U.S.C. § 61, § 83, § 212, § 1001(a), § 1011(a), § 1012, § 3402(n), § 7214, and § 7803.

Provisions of the Code of Federal Regulations, Title 26 involved include 26 C.F.R. § 1.83-3(g), § 1.83-4(b)(2), § 1.1012-1(a), § 1.1011-1, and § 1.1001-1.¹

INTRODUCTION

Petitioner Richard Boggs (“Boggs”) petitioned the United States District Court (“USDC”) to contest a notice of determination related to IRS Withholding Certificate (W-4). After exhausting every avenue of administrative remedy at his disposal the IRS failed to provide a basis for their “determination”² as required by law³. The IRS nor the courts cited a basis for the “determination” that Boggs was not entitled to claim “EXEMPT” status on his W-4 signed under penalty of perjury, instead cited only “authority”. For to do so, the IRS and the USDC would have to come face-to-face with the language of instructions found in IRS Publication 17 Tax Guide For Individuals regarding “Cost Basis”... which is in alignment with Petitioner’s interpretation of 26 USC §§ 83(a) and 1012, and relevant implementing regulations

¹ The pertinent text of these provisions is set forth verbatim in the Appendix at A12 – A25.

² A “determination” must be the result of a consideration of all relevant facts and statutes. See Hughes v. U.S., 953 F.2d 531 (CA9 1992); Portillo v. Comm'r of IRS, 932 F.2d 1128 (CA5 1991); Elise v. Connell, 908 F.2d 521 (CA9 1990); Jensen v. Comm'r of IRS, 835 F.2d 196 (CA9 1987); Scar v. Comm'r of IRS, 814 F.2d 1363 (CA9 1987); Benzvi v. Comm'r of IRS, 787 F.2d 1541 (CA11 1986); Maxfield v. U.S. Postal Service, 752 F.2d 433 (1984); Weimerskirch v. Comm'r of IRS, 596 F.2d 358, 360 (CA9 1979); Carson v. U.S., 560 F.2d 693 (1977); U.S. v. Janis, 428 U.S. 433, 442 (1975); Alexander v. “Americans United” Inc., 416 U.S. 752, 758-770 (1973); Pizzarello v. U.S., 408 F.2d 579 (1969); Terminal Wine, 1 B.T.A. 697, 701-02 (1925); Couzens, 11 B.T.A. 1140, 1159, 1179.

³ “[T]axpayers [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.*, *supra*.

26 CFR 1.83-3(g) (amount paid is “any money or property”), 1.83-4(b)(2) (apply § 1012 to calculate cost), and 1.1012(a) (cost is “cash or other property”). Authority alone is insufficient to base a taking of property. As stated in Boggs’ USCA4 brief, pg 4, “Such an unfounded “determination” is arbitrary, capricious, an abuse of discretion, and not in accordance with law. (5 USC § 706(2)(A))”.

STATEMENT OF THE CASE

1. Factual Background and Proceedings in District Court.

For all years in question the Petitioner submitted the W-4 Withholding Certificate required by his employer(s) as a prerequisite for employment on which he, under penalty of perjury, certified his status as EXEMPT because of his good-faith reliance on the subject provisions of law⁴ and the IRS’s own instructions⁵ that he met, and still meets, both requirements under 26 USC 3402(n):

- (1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and
- (2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

⁴ For the purposes of this petition the term “subject provisions” shall be deemed to mean 26 USC §§ 1, 61(a), 83(a), 212, 1001, 1011, 1012, 1402(b), 3121(e), 3306(j), 3402(n), 6201, 6671(b), 7343, 7608, 7621, 7651(4)(A), 7655; 42 USC § 411(b)(2); 26 CFR 1.1-1(a) – (c), 1.83-3(e), (f), (g), 1.83-4(b)(2), 1.1001-1(a), 1.1011-1(a), 1.1012-1(a), 1.1401-1(a), 1.1402(a)-2(a), 1.1402(b)-1(d), 31.0-2(a)(1), 31.3121(e)-1(b), 301.6201-1(a), and 602.101. IRS Publication 17 ch 13 Basis of Property [Cost Basis]. (See Appendix A19)

⁵ See IRS Publication 17 excerpt for 2016 at Appendix A7.

On October 27, 2016 the IRS issued a “lock-in letter” to four of Petitioner’s past and present employers stating they (IRS) had “determined you aren’t entitled to claim exempt status...” and instructing those employers “not to honor your current form W-4...”.

On November 2, 2016 Petitioner formally appealed and challenged said “determination” per instructions on the LTR 2801C (Lock-in letter) on page 1 under “IF YOU DON’T AGREE – You can request a review of our determination.”⁶

On December 27, 2016 the IRS responded to Petitioner’s November 2 correspondence citing only authority but cited no basis for their “determination”. (See footnote 2 above).

On February 22, 2017 the IRS refused to grant Petitioner review as required by the Taxpayer Bill of Rights 26 USC 7803(a)(3)(D) & (E).

On December 5, 2017 Boggs filed an Administrative Claim for Unauthorized Collection Actions with the IRS Compliance Technical Support Manager as required by 26 USC 7433 and 26 CFR 301.7433-1. No reply was received.

On July 3, 2018 the Petitioner filed suit in USDC against the Respondent for refusing to provide a basis for their “determination” that the Petitioner was not “entitled to claim exempt status...” and refusing Petitioner’s request for a hearing.

On July 16, 2019 the USDC issued judgement to dismiss (See Appendix A37). The lower court failed to address ANY of the foundational issues brought before it by

⁶ See Appendix A4

the Petitioner in its opinion as they relate to IRC § 83 and subject provisions cited in footnote 2, nor the issue of due process.

On August 10, 2019 Petitioner filed a timely Motion to Reconsider in the USDC.

On September 4, 2019 USDC denied Petitioner's Motion for Reconsideration. Again, failing to address any of the foundational issues brought by the Petitioner.

The USDC remained silent regarding these questions in its decision and ruled against him on other grounds. Thus, Boggs again sought a "clear explanation" of the law with regard to 26 USC §§ 83(a), 1012, and 3402(n) before the Fourth Circuit.

2. Proceedings in Appeals Court.

On August 23, 2019 Petitioner filed his timely Notice of Appeal to USCA4.

On March 2, 2020 the USCA4 affirmed the USDC's decision (See Appendix A1). The Appeals Court offered no explanations other than a perverted citing of the language of 26 USC 61(a)(1) and *United States v. Sullivan*, 788 F.2d 813, 815 (1st Cir. 1986):

"Boggs contends that "compensation for services" is not "gross income." However, contrary to Boggs' assertions, "compensation for services" is wages and, thus, taxable income. See e.g., *United States v. Sullivan*, 788 F.2d 813, 815 (1st Cir. 1986) (noting that "[c]ourts uniformly have rejected as frivolous the arguments that money received in compensation for labor is not taxable income"); see also 26 U.S.C. § 61(a)(1) (2018) (including "[c]ompensation for services" in definition of "gross income")."

Boggs made no such claim regarding compensation – but rather did claim that the IRS deprives him of the operation of 26 USC § 83 in its "determination" he has gross income upon which to sustain a liability.

The Fourth Circuit of Appeals Court (“USCA4”) has a history of perverting the language of 26 USC 61(a)(1) to avoid having to be confronted with 26 USC § 83 and its subject provisions in footnote 4 by omitting “Except as otherwise provided in this subtitle...”. See *US v. Melton, #94-5535 (CA4 May 22, 1996 Unpublished) (USDC #CR-93-34 W.D. North Carolina at Shelby)*. Thereby willfully and intentionally attempting to change the language of this statute to fit their biased, predetermined ruling. The actions of the USCA4 court is judicial misconduct at best and criminal conspiracy at worse.

The USCA4’s citing of *Sullivan* is completely irrelevant – *Sullivan* makes no mention, nor claim of the statutory provisions and IRS publications relied upon by this Petitioner in this case. Therefore, the *Sullivan* cite by the USCA4 is utterly baseless and irrelevant.

Boggs filed a timely Motion to Rehear on March 30, 2020 which was subsequently denied on May 18, 2020 (See Appendix A3).

REASONS FOR GRANTING THE WRIT

1. Supervisory action is needed to preserve due process in tax cases

In determining whether certiorari should be granted, one factor considered is whether the decision below has sanctioned a departure so far from the usual course of judicial proceedings that this Court’s

supervision is required in order to preserve due process. Such departure is present here.

To punish a person for doing what the law plainly permits is a due process violation of the most basic sort." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); see also *U.S. v. Goodwin*, 457 U.S. 368, 372 (1982).

- 1) The law clearly permits "any money or property" as a cost.
- 2) The law provides no exception for "labor" regarding "any money or property".
- 3) Labor is property⁷
- 4) The law permits the Petitioner to raise statutory issues to probe the IRS for clear explanations,⁸ and he is clearly permitted, if not required, to rely on the language of the law and decisions of this Court that tell him how to interpret it. Respondent is not above bringing criminal charges, despite their inability to prove the law has operated, and despite Petitioner's obvious good-faith understanding of the law (i.e., innocence).

"[T]axpayers [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.*, *supra*. This notion has proven meaningless in the twenty-five years Respondent has been confronted over the statutory provisions above, which wouldn't be the first occasion on which the ranks required a field dressing. See *U.S. v. Lanier*, 520 U.S.

⁷ See *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746 (1884)

⁸ See 26 U.S.C. § 7803.

259 (1997). Spare a litigant the monetary sanctions and simply provide an exegesis moment and let them appeal. Just the running dispute concerning § 83 suffices to expose unacceptable modes of enforcement and abuses of discretion, so other briefed claims from below will not be explored herein.

Petitioner charges that:

- 1) no tax assessment under 26 U.S.C. is valid when the operation of the statute that governs how to tax him is a secret, held under threat of enormous monetary sanctions or otherwise.
- 2) That his rights to due process are violated when he is barred, through prudential rule or statute, any access to the law by limiting review of governing statutory issues in any court.
- 3) That due process prohibits the placing on hold of proof the government is not breaking the law in order to obtain property from him, be it Federal Reserve Notes or a passport privilege per 26 U.S.C. § 7345.

CONCLUSION

This case exposes a clearly willful, intentional abuse of authority by the IRS for the sole purpose of exacting Petitioner's property not owed in violation of the Petitioner's Fifth Amendment right as provided by the Constitution of the United States.

The IRS has weaponized their "Withholding Compliance Program" in order to, in the words of the DOJ⁹, "reign in" those "falsely claiming exempt status" – yet the IRS nor the DOJ provide a lawful basis for their claim that the Petitioner "falsely" claimed exempt status on his W-4(s) signed under penalty of perjury. Their "reigning in" is the result of a secret "determination" imposed upon the Petitioner for daring to have an understanding of the law and arranging his affairs so he only pays the minimum amount to the government as required by law.

The USDC and USCA4 courts neglected their duty as "reviewing courts" per 5 U.S.C. § 706 to make a decision regarding the relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

The lower court's refusal to restrain the unlawful activities of the IRS and show even a minuscule amount of concern for the rights of the Petitioner has perpetuated itself into a Constitutional crisis that requires the supervisory intervention of this court.

Respectfully submitted,


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⁹ See USCA4 Appeal: 19-2084 Doc:11 Pg:10