

APPENDIX

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-2084

RICHARD E. BOGGS,

Plaintiff - Appellant,

v.

UNITED STATES,

Defendant - Appellee,

and

DEPARTMENT OF TREASURY; INTERNAL REVENUE SERVICE; C.K. O'NEAL,

Defendants.

Appeal from the United States District Court for the District of South Carolina, at Columbia.
Mary G. Lewis, District Judge. (3:18-cv-01915-MGL)

Submitted: February 7, 2020

Decided: March 2, 2020

Before NIEMEYER, KING, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard E. Boggs, Appellant Pro Se. Robert Joel Branman, Michael J. Haungs,
Supervisory Attorney, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE,

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard E. Boggs appeals from the district court's order adopting the recommendation of the magistrate judge and granting the Defendants' motion to dismiss. Boggs sought damages for improperly withheld taxes, specifically from "compensation for services," under 26 U.S.C. § 7433 (2018). 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"). Accordingly, the actions of the IRS employees did not violate the law, and Boggs has, thus, failed to state a claim under § 7433. Accordingly, we affirm. We dispense with oral argument because facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT

No. 19-2084
(3:18-cv-01915-MGL)

RICHARD E. BOGGS

Plaintiff - Appellant

v.

UNITED STATES

Defendant - Appellee

and

DEPARTMENT OF TREASURY; INTERNAL REVENUE SERVICE; C. K. O'NEAL

Defendants

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge King, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

In reply refer to: 0866000000 Oct. 27, 2016 LTR 2801C W3
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BODC: NOBOD

RICHARD E BOGGS
7001 ST ANDREWS ROAD 124
COLUMBIA SC 29212-1137

Social security number: XXX-XX-5787 Employer: LOGICTECHNOLOGY INC
Employer identification number: 14-1718796

Dear RICHARD E BOGGS

WHY WE ARE WRITING TO YOU

Generally, the amount your employer withholds for federal income tax is based on your Form W-4, Employee's Withholding Allowance Certificate. However, the IRS may review whether you are entitled to claim exempt status or a certain number of withholding allowances.

We determined you aren't entitled to claim exempt status or more than a specified number of withholding allowances; therefore, you were selected for the Withholding Compliance Program.

INSTRUCTIONS WE GAVE YOUR EMPLOYER(S)

We sent your employer a "lock-in letter" instructing your employer to begin withholding income tax from your wages based on the following withholding rate (marital status) and allowances:

Withholding Rate (Marital Status) single
Withholding Allowances: 0000

We also instructed your employer(s) not to honor your current Form W-4 or a new Form W-4 from you, UNLESS it results in MORE withholding than at the withholding rate and withholding allowances listed above.

WHAT THIS CHANGE MEANS FOR YOU

This change in your withholding rate (marital status) and/ or withholding allowances will increase the amount of tax withheld from your wages.

IF YOU DON'T AGREE

You can request a review of our determination. You can call us at the number listed below within 30 days from the date of this letter.

We will consider your explanation why you are entitled to a different withholding rate and/or number of withholding allowances (or exempt status). If you file jointly, we will need to determine

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RICHARD E BOGGS
7001 ST ANDREWS ROAD 124
COLUMBIA SC 29212-1137

the total number of withholding allowances you and your spouse are entitled to claim.

- When you call, have the following information available. If you file jointly, you must have the same information available for your spouse.
- 1. Completed Form W-4 and worksheets. (You must complete the "Two Earners/Multiple Jobs Worksheet" on the back of the Form W-4, if you have more than one job or your spouse works.)
- 2. Most recent pay stubs for all jobs.
- 3. Number of withholding allowances you (and your spouse) are currently claiming on your Form(s) W-4.
- 4. The social security number and date of birth for all dependent you are entitled to claim.
- 5. A copy of the most recent tax return due, including all schedules, forms and attachments.
- 6. If you file jointly, your spouse's complete name, social security number (SSN), and current employer.
- If you prefer you can write to us at the address listed below. Send a written statement requesting a redetermination and the information above to support your claim that you are entitled to a different withholding rate (marital status) and/or number of withholding allowances (or exempt status).
- If the information justifies a change to the withholding rate (marital status) and/or withholding allowances listed above, we will instruct your employer(s) to adjust your income tax withholding accordingly.

YOU COULD BE ASSESSED A PENALTY

If there is no reasonable basis to justify the withholding rate (marital status), withholding allowances, or exempt status claimed on your Form W-4 you furnished to your employer, you may be subject to a \$500 civil penalty under Internal Revenue Code Section 6682 for making a false statement about your withholding.

We aren't making a determination of your ultimate tax liability. You pay federal income tax through withholding or by making estimated tax payments throughout the year. Estimated tax is the method that can be used to pay tax on income that isn't subject to withholding. If you don't pay enough tax throughout the year, you may have to pay a penalty for underpayment of estimated tax.

LTR 2801C

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RICHARD E BOGGS
7001 ST ANDREWS ROAD 124
COLUMBIA SC 29212-1137

HOW YOU CAN BE RELEASED FROM THE WITHHOLDING COMPLIANCE PROGRAM

You must continue to file returns and pay your tax due. If you timely meet all your *filing* and payment obligations for three consecutive years, you can request that we release you from the Withholding Compliance Program.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

- Visit our website at www.irs.gov and search keyword "withholding compliance."
- Publication 505, Tax Withholding and Estimated Tax
- For tax forms, instructions and publications, visit www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

HOW TO CONTACT THE WITHHOLDING COMPLIANCE UNIT

You can call the Withholding Compliance Unit, weekdays between 8a.m. and 8 p.m. at 1-855-839-2235

You can send us the information by fax. Our fax number *is* 855-202-8300. Include a cover sheet with the following information:

Sincerely yours,
C.K.O'Neal
Operations Manager, Collections

Publication 17 (2016), Your Federal Income Tax for Individuals

Gains and Losses

The four chapters in this part discuss investment gains and losses, including how to figure your basis in property. A gain from selling or trading stocks, bonds, or other investment property generally is taxable. A loss may or may not be deductible. These chapters also discuss gains from selling property you personally use — including the special rules for selling your home. Nonbusiness casualty and theft losses are discussed in chapter 25 in Part Five.

13. Basis of Property

Introduction

This chapter discusses how to figure your basis in property. It is divided into the following sections.

- Cost basis.
- Adjusted basis.
- Basis other than cost.

Your basis is the amount of your investment in property for tax purposes. Use the basis to figure the gain or loss on the sale, exchange, or other disposition of property. Also use it to figure deductions for depreciation, amortization, depletion, and casualty losses.

If you use property for both business or for production of income purposes, and for personal purposes, you must allocate the basis based on the use. Only the basis allocated to the business or the production of income part of the property can be depreciated.

Your original basis in property is adjusted (increased or decreased) by certain events. For example, if you make improvements to the property, increase your basis. If you take deductions for depreciation or casualty losses, or claim certain credits, reduce your basis.

Cost Basis

The basis of property you buy is usually its cost. **The cost is the amount you pay in cash, debt obligations, other property, or services.** Your cost also includes amounts you pay for the following items:

- Sales tax,
- Freight,
- Installation and testing,
- Excise taxes,
- Legal and accounting fees (when they must be capitalized),
- Revenue stamps,
- Recording fees, and
- Real estate taxes (if you assume liability for the seller).

In addition, the basis of real estate and business assets may include other items.

Richard E. Boggs
7001 St Andrews Rd., #124
Columbia, South Carolina 2921 2

IRS Compliance Services Withholding Compliance Unit
P.O. Box 9047, Stop 837
Andover, MA 01810-0947

Re: Appeal of W-4 determination

Dear IRS Agent:

This is a formal appeal of your form letter LTR 2801C, which you recently sent me whereby you made a determination about my W-4 certificate filed with my employer.

I disagree with your wrongful determination in its entirety. Please furnish me the information and reasons on which you based your decision. Then schedule my appeal for a hearing and notify me of the place and time.

Send me all the necessary forms and information I might need to perfect my appeal. If I have used the incorrect procedures to appeal your unlawful decision, please notify me of your preferred method. Unless I hear otherwise from you within 10 days, I will consider this appeal correctly filed.

My W-4 form was correctly filed and you have no authority to determine otherwise. In fact, the Internal Revenue Code Section 3402 provides that the employer MUST accept my withholding certificate as filed.

I have additional information for you to consider and I have a reasonable basis for the statements made on my form. Please inform me how you will evaluate the information, your criteria and standards. Also, would you inform me what additional information would satisfy your standards?

Please do not interfere anymore with the contractual relationship between my company and me. You have no right or authority to harass my employer. Direct all of your communication to my company through me.

By copy of this letter, I am notifying my employer that this matter is on appeal through the IRS Administrative appeals process and until a final determination has been made there, they can disregard any notices from your agency.

Date: 2/2/91 2/1/91 Sincerely,

IRS Department of the Treasury

310 Lowell Street Stop 837
Andover MA 01810

In reply refer to: 0866145811 Dec.
27, 2016 LTR 3042C 0
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RICHARD E BOGGS
7001 ST ANDREWS ROAD 124
COLUMBIA SC 29212-1137

005745

Social Security Number: [REDACTED]-5787

Dear Richard E Boggs:

WHY ARE WE WRITING TO YOU?

This letter is in response to your inquiry asking for information about the legal authority supporting the IRS Withholding Compliance Program. This letter contains Citations for the laws and regulations that give us authority Where you can find these laws and regulations What authority the laws and regulations give us If you have the right to take legal action against your employer What to do if you have more Question s

WHAT LAWS AND REGULATIONS GIVE US AUTHORITY FOR THE WITHHOLDING COMPLIANCE PROGRAM?

Internal Revenue Code (IRC):
Sections 3402 and 3403 (Title 26 of the United States Code)

Treasury Regulations:
Sections 31.3402(a)-1 through 31.3402(f)-1 (Title 26 of the Code of Federal Regulations). In particular,
Section 31.3402(f)-1(c). Treasury Decision 9337, Withholding Exemptions, 72 F 38478 (Federal Register, July 13, 2007)

WHERE CAN YOU FIND THESE LAWS AND REGULATIONS?

You can find copies of the Internal Revenue Code, the Code of Federal Regulations, and the Federal Register at many local libraries. You can also find "Laws and Regulations" at the Reference Center on www.usa.gov. Treasury Decision 9337 is available at www.irs.gov/pub/irs-irbs/irb07-35.pdf.

WHAT AUTHORITY DO THE LAWS AND REGULATIONS GIVE US?

The IRS has the authority to ensure that the deduction and withholding of federal income tax from your wages is *in* compliance with the laws and regulations, cited above. They give us the authority, when necessary, to instruct employers to withhold taxes from your wages based on the marital status and number of withholding allowances that we specify.

IRC Section 3403 holds employers liable to the United States for the federal income taxes that the laws and regulations require your employer to deduct and withhold.

CAN YOU TAKE LEGAL ACTION AGAINST YOUR EMPLOYER?

IRC Section 3403 also states that the employer shall not be liable to any person for the amount of any payment required to be deducted and withheld. Thus, when your employer complies with the laws and regulations listed above and withholds federal income tax from your wages, you have no "cause of action" (basis for legal action) against your employer to recover the amount of income tax withheld and/or to prohibit your employer from withholding the amount as instructed by IRS.

WHAT IF YOU HAVE MORE QUESTIONS?

If you have any questions, you may call the Withholding Compliance Unit, weekdays between 8:00 a.m. and 8:00 p.m. at 1-855-839-2235.

Sincerely yours,

C. K. □Neal
Operations Manager, Collections

CONSTITUTIONAL AMENDMENT, STATUTES,
AND REGULATIONS INVOLVED
(PERTINENT TEXT)

The **Fifth Amendment** of the United States Constitution provides:

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

5 U.S.C. § 706 provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed;

and

(2) hold unlawful and set aside agency action, findings, and conclusions

found to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

26 U.S.C. § 61 provides:

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

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

- (2) Gross income derived from business;
- (3) Gains derived from dealings in property; ...

26 U.S.C. § 61(b) provides:

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 provides:

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 any) paid for such property,

shall be included in the gross income of the person who performed such services...

26 U.S.C. § 212 provides:

Expenses for Production of Income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year-

- (1) for the production or collection of income; ...

26 U.S.C. § 1001(a) provides:

Computation of Gain or Loss. The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011...

26 U.S.C. § 1011(a) provides:

General rule. The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012...) ...

26 U.S.C. § 1012 provides:

Basis of Property-Cost. (a) In general. The basis of property shall be the cost of such property ...

26 U.S.C. § 3402(n) provides:

Employees incurring no income tax liability Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(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.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

26 U.S.C. § 7214 provides:

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

(3) **who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment;** or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) who makes or signs any fraudulent entry in any book, or makes or signs

any fraudulent certificate, return, or statement; or

(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

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 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court.

The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

26 U.S.C. § 7345 (a)(3) provides:

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.

26 U.S.C. § 7433 provides:

(a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages In any action brought under subsection (a) or petition filed under subsection (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000, in the case of negligence) or the sum of—

(1)

actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2)

the costs of the action.

26 U.S.C. § 7803 provides:

[Commissioner of Internal Revenue; other officials.]

(3) Execution of duties in accord with taxpayer rights. In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including -

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,
- (D) the right to challenge the position of the Internal Revenue Service and be heard,
- (E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
- (F) the right to finality,
- (G) the right to privacy,
- (H) the right to confidentiality,
- (I) the right to retain representation, and
- (J) the right to a fair and just tax system.

26 C.F.R. 1.83-3(g) provides:

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) provides:

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

26 C.F.R. 1.1001-1 provides:

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.

26 C.F.R. 1.1011-1 provides:

Adjusted basis. - The adjusted basis ... is the cost or other basis prescribed in section 1012[.]

26 C.F.R. 1.1012-1(a) provides:

... The cost is the amount paid for such property in cash or other property.

26 C.F.R. 301.7433-1 provides:

a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally , or by reason of negligence, disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of \$1,000,000 (\$100,000 in the case of negligence), or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or international actions of the officer or employee; and

(2) Costs of the action.

An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this

section.

(b) *Actual, direct economic damages* -

(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional, or negligent, actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see paragraph (h) of this section*) or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) **Administrative costs.** For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) **Costs of the action.** Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(d) *No civil action in federal district court prior to filing an administrative claim* - (1) Except as provided in paragraph (d)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim* -

(1) ***Manner.*** An administrative claim for the lesser of \$1,000,000 (\$100,000 in the case of negligence) or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Area Director,

Attn: Compliance Technical Support Manager of the area in which the taxpayer currently resides.

(2) Form. The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) No action in federal district court for any sum in excess of the dollar

amount sought in the administrative claim. No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) Period of limitations -

(1) Time for filing. A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) Right of action accrues. A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) Recovery of costs under section 7430. Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating

to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7433(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (e) of this section, are not recoverable under section 7430.

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Calculating “gross income At A Glance”

- 1) Labor is property (see *Butcher’s Union Co. v. Crescent City Co.*, 111 U.S. 746. At 756-757 (1883)).
- 2) The term “any” in all inclusive unless the law makes an exception. (see *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *United States 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*). No exception for labor under 26 CFR § 1.83-3(g), or anywhere else.
- 3) 26 USC § 61 Gross income defined.
 - a. (a) **Except as otherwise provided in this subtitle**, gross income means all income from whatever source derived, including (but not limited to) the following items:
 - i. (1) Compensation for services... (to which 26 USC § 83 applies)
 - ii. (3) **Gains** derived from dealings in **property**:
- 4) 26 CFR 1.61-6. Gains derived from dealings in property. –
 - a. *In general. Gain realized on the sale or exchange of property is included in gross income, unless excluded by law.*
For this purpose property includes tangible items, such as a building, and **intangible items**, such as goodwill. **Generally, the gain is the excess of the amount realized over the**

unrecovered cost or other basis for the property sold or exchanged. The specific rules for computing the amount of gain or loss are contained in section 1001 and the regulations thereunder.

- 5) 26 USC § 83(a) Separate the “amount paid” from the excess (gain).
- 6) 26 CFR 1.83-1 Implements § 83 and applies to all compensation.
- 7) 26 CFR § 1.83-3(g) ***Amount paid.*** For 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 section 83 applies...
- 8) 26 CFR 1.83-4(b)(2) If 1.83-1 applies, go to § 1012 to figure cost.
- 9) 26 USC § 1012 Cost is property, all kinds of property – tangible **and intangible.**
- 10) 26 USC § 1011 Cost is also known as “adjusted basis”.
- 11) 26 CFR 1.1011-1 Cost is also known as “adjusted basis”.
- 12) 26 USC § 1001 Adjusted basis must be subtracted to identify excess.
- 13) 26 CFR 1.1001-1(a) Adjusted basis must be “restored”, what is left is the gain.

(Note: IRS Publication 17 / Basis of Property / Cost Basis affirms services (labor) are “cost” to the provider. See Appendix A7.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Richard E. Boggs,

Plaintiff,

C/A No.: 3:18-1915-MGL-SVH

vs.

REPORT AND RECOMMENDATION

United States of America,

Defendant.

Richard E. Boggs (“Plaintiff”), proceeding pro se, filed this action against the United States of America (“Defendant”). Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), this matter has been referred to the undersigned for all pretrial proceedings. This matter comes before the court on Defendant’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The motion having been fully briefed [ECF Nos. 16, 17, 18], it is ripe for disposition. For the reasons that follow, the undersigned recommends that the district judge grant Defendant’s motion to dismiss this case.

I. Factual and Procedural Background

This is the fourth case Plaintiff has filed seeking to challenge the IRS’s issuance on or about October 27, 2016 of a “lock-in letter” to his employer, Logic Technology, Inc. (“LTI”) to disregard the W-4 form Plaintiff had submitted. See 3:16-cv-01178-MGL Boggs v. United States et al. (“Boggs I”), 3:16-cv-02865-MGL Boggs v. United States et al. (“Boggs II”), 3:17-cv-02166-MGL Boggs v. Logic

Technology, Inc. et al. (“Boggs III”).¹ In compliance with the lock-in letter, LTI withheld income taxes from Plaintiff’s wages. Plaintiff seeks damages pursuant to 26 U.S.C. § 7433 against the United States in the amount of \$403,459.68—3,459.68 for compensation he claims was unlawfully withheld, plus \$100,000 for each of the four lock-in letters. Specifically, Plaintiff argues that his wages are not taxable income.

II. Discussion

A. Standard on Motion to Dismiss

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is “not required to accept as true the legal conclusions set forth in a plaintiff’s complaint.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Indeed, “[t]he presence of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot support the legal conclusion.” *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001).

¹ The court takes judicial notice of its own records. *Ceo v. Ozmint*, 2006 WL 2850538, at *2 (D.S.C. Sept. 29, 2006) (“This court may take judicial notice of its own records in this prior case.”) (citing *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“ . . . ‘[t]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.’”)).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

As in his previous cases, Plaintiff seeks to restrain Defendant's ability to assess and collect taxes. The Anti-Injunction Act, however, bars this relief.

The Anti-Injunction Act, 26 U.S.C. § 7421(a) provides that unless certain statutory exceptions are applicable, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person[.]" The Supreme Court has indicated that the purpose of the Anti-Injunction Act is "the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial

interference, 'and to require that the legal right to the disputed sums be determined in suit for a refund.'" *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). Although there are limited statutory exceptions to the Anti-Injunction Act, Plaintiff has not alleged any facts to show that any of the statutorily-created exceptions apply.

There are also limited judicial exceptions to the Anti-Injunction Act. See *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). To establish a claim for injunctive relief under the holding in *Enochs*, the taxpayer must show: (1) under the most liberal view of the applicable laws and facts, it is clear that the government cannot prevail on the merits; and (2) absent an injunction, irreparable injuries will occur for which there is no adequate remedy at law. 370 U.S. at 6–7. Unless both of these prerequisites are met, "a suit for preventive injunctive relief must be dismissed." *United States v. American Friends Serv. Comm.*, 419 U.S. 7, 10 (1974).

Plaintiff has not alleged any facts to show that he can meet either of the *Enochs* prerequisites. First, Plaintiff has failed to demonstrate that the government cannot prevail on the merits. As to the second *Enochs* factor, Plaintiff has adequate remedies at law. The right of a taxpayer to petition the Tax Court and his right, in the alternative, to sue for a refund in a federal district court are adequate remedies at law. See, e.g., *Bob Jones Univ.*, 416 U.S. at 746; *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 314 (9th Cir. 1982) (citing *Bailey v. George*, 259 U.S. 16 (1922)) ("Since the Supreme Court decision in [*Bailey*], it has been established that payment of the tax followed by a suit for refund

constitutes an adequate remedy at law.”); *Hobson v. Fischbeck*, 758 F.2d 579, 581 (11th Cir. 1985) (holding injunctive relief to be improper when plaintiff “could pay the disputed tax and then sue for a refund”). Because Plaintiff has not alleged any facts to show that any of the statutory or judicially created exceptions to the Anti-Injunction Act are applicable, the undersigned recommends this action be dismissed. Other courts have similarly rejected arguments similar to those argued by Plaintiff. See, e.g., *Fennel v. Comm’r*, 579 F. App’x 767, 769 (11th Cir. 2014) (“We have said that arguments that wages are not taxable income have ‘been rejected by courts at all levels of the judiciary and are patently frivolous.’”); *Richmond v. Comm’r*, 474 F. App’x 754, 755 (10th Cir. 2012) (rejecting the argument as “completely lacking in legal merit and patently frivolous”); *Callahan v. Comm’r*, 334 F. App’x at 755 (affirming the imposition of sanctions for filing appeal advancing the same frivolous argument); see also *Crain v. Comm’r*, 737 F.2d 1417, 1418 (5th Cir. 1984) (holding that a specific response to long-held frivolous tax protestor arguments is not required). The IRS website has a section devoted to frivolous tax arguments, including that presented by Plaintiff. See *The Truth About Frivolous Tax Arguments—Section I (A to C)*, Internal Revenue Service, Sept. 26, 2018, https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-section-i-a-to-c#_Toc350157891 (last visited 12/4/2018). Because Plaintiff has failed to demonstrate a plausible claim for relief, Defendant’s motion to dismiss should be granted under Fed. R. Civ. P. 12(b)(6).

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends that the court grant Defendant's motion to dismiss.

IT IS SO RECOMMENDED.

December 6, 2018

Shiva V. Hodges

Columbia, South Carolina

United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

RICHARD BOGGS,
Plaintiff,

vs.

CIVIL ACTION NO. 3:18-1915-MGL

UNITED STATES OF AMERICA,
Defendants.

**ORDER ADOPTING THE REPORT AND RECOMMENDATIONS
AND GRANTING DEFENDANT'S MOTION TO DISMISS**

Plaintiff Richard Boggs (Boggs) filed this complaint against the United States of America (the U.S.A.) challenging the Internal Revenue Service's issuance of a "lock-in letter" to his employer to disregard the W-4 form Boggs had submitted. He is self represented.

The matter is before the Court for review of the Report and Recommendation of the United States Magistrate Judge suggesting the U.S.A.'s motion to dismiss be granted under Fed. R. Civ. P. 12(b)(6). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with

making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on December 6, 2018. The Clerk of Court entered Boggs's objections on December 17, 2018, his supplement to his complaint on March 1, 2019, and his supplement to his objections on April 5, 2019.

Boggs's objections are a scattershot collection of case citations, conclusory arguments, and the like. Although he offers few specific objections, in an abundance of caution, the Court has made a de novo review of the entire record and concludes the Magistrate Judge is correct: Boggs has failed to state a claim upon which relief can be granted. Therefore, dismissal of his complaint is appropriate. Because the Court agrees with the Magistrate Judge's well-reasoned opinion, it need not repeat the analysis here.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Boggs's objections, adopts the Report, and incorporates it herein.

Therefore, it is the judgment of this Court the U.S.A.'s motion to dismiss is GRANTED in accordance with Fed. R. Civ. P. 12(b)(6).

To the extent Boggs requests the Court recuse itself from this case, inasmuch as Boggs has failed to demonstrate recusal is appropriate, the request is DENIED.

IT IS SO ORDERED.

Signed this 16th day of July, 2019, in Columbia, South Carolina.

/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Boggs is hereby notified of the right to appeal this Order within sixty days from the date of this Order in accordance with the Federal Rules of Appellate Procedure.