No. 22-292

In The
Supreme Court of the United States

Lt. Col. James D. Sullivan
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

On Writ of Certiorari
To The Fourth Circuit of the United States
Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Petitioner takes this petition for a writ of certiorari from the decision in the United States Tax Court of 4 August, 2021 (File #11738-20L), and the affirmation of that decision by the United States Court of Appeals for the Fourth Circuit of 28 April, 2022 (File #21-2299). From that order of the United States Court of Appeals, this petition for a writ of certiorari issues.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a), and the Constitution of the United States at Article III, Section 2.

Constitutional/Statutory Provisions Involved

Constitution of the United States, Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

Constitution of the United States, Article VI, Clause 3:

> "...all...judicial Officers, both of the United States and of the Several States, shall be bound by Oath or Affirmation, to support this Constitution..."

Constitution of the United States, 7th Amendment:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Constitution of the United States, 16th Amendment:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Statement of Facts

1. This case results from "non-income" earnings (Revenue received from non-federal, non-privileged payers). While "income" may be taxed by Respondent, he has no authorized interest in non-income received by Petitioner from a mortgage extension agreement ($250,000.00) and from a mortgage payment ($931,920.00) received in 2008, and constructive earnings ($481,861.00) calculated by IRS from foreclosure on land in 2012. Petitioner did not file Form 1040 return for 2008 believing no taxable income for that year. Respondent prepared an initial Substitute for Return (SFR) for 2008 resulting in assessment of $2,658.00 in income taxes, plus interest and penalties, totaling $4,136.00, which Petitioner promptly paid on 3 April, 2012. Petitioner filed a Form 1040 return for 2012 on 16 September, 2016, excluding said earnings which were unknown to him.

2. Respondent "selected" Petitioner's '08 and '12 earnings for audit in conjunction with an audit of Petitioner's earnings for 2006. (Respondent's

claim against Petitioner for '06 taxable year for over $12,000,000.00 was dismissed in Tax Court after six years of harassment on or about December 23, 2017, in favor of Petitioner.) In May, 2017, Respondent issued NOD to Petitioner determining he owed more than $300,000.00 in additional income taxes, plus interest and penalties, for years '08 and '12, generating this conflict. From that NOD, Respondent now alleges Petitioner owes more than $580,000 in taxes, interest and penalties for '08 and '12.

3. In April, 2019, Respondent sent Petitioner a Final Notice of Levy to collect tax liabilities. Petitioner challenged the levy through CDP hearing, during which his arguments were ignored as "frivolous"/"illogical". After the CDP proceeding, Appeals determined the proposed levy could proceed.

4. Petitioner petitioned Tax Court for review of Appeals' determination and arguments challenging the tax liabilities were again ignored as "frivolous/"illogical", although Petitioner's primary arguments were based upon Respondent having no authorized interest over earnings acquired as non-taxable self-employment earnings. Respondent moved for summary judgment which Tax Court allowed, rejecting Petitioner's jurisdictional arguments and argument he had been denied due process in CDP proceedings and investigations leading up to said hearing. The Tax Court sustained IRS' levy to collect Petitioner's alleged delinquent tax liabilities for '08 and '12 in File No. 11738-20L dated 4 August, '21.

5. Petitioner timely filed Appeal to U. S. Court of Appeals (COA) for the 4th Circuit on 1 November, '21. On 4 January, '22, Petitioner filed his Informal Brief to COA, arguing Tax Court had erred.

6. On or about 28 April, '22, COA issued its Notice of Judgment by unpublished opinion affirming Tax Court. From this opinion, Petitioner takes appeal.

Reasons for Granting the Petition.

7. This Case affects all citizens of the several States on the issue of constitutionally protected right to trial by impartial jury in a civil case and precluding Respondent from continuing the myth propagated by over 70 years of misinformation that all earnings are taxable by IRS.

Argument

First Question Presented: **Whether or not Petitioner is entitled to trial by jury as mandated by the Seventh Amendment to the US Constitution in civil federal income tax cases:**

8. The Revolutionary War was fought to wrest "freedom" from the clutches of the King of England. The 27 grievances of the American colonists in the Declaration of Independence (DOI) make this clear. Over the centuries since that war, Americans have been cunningly coerced into waiving rights and freedoms to the point of having no clear

understanding of what they are. (See *US v. Mincker*, 350 US 179, page 187 (1956)), where, "Because of what appears to be a lawful command on the surface, many Citizens, because of their respect for what appears to be law, are cunningly coerced into waiving their rights due to ignorance.")

9. Right to trial by jury, established precisely to guard against legislative usurpation of rights in civil matters, has been legislated out of existence by judicial interpretation of Rules (such as Rule 56) and tyranny of the Code's "due process".

10. There can be no argument that an agenda is at work here. Since the 1960's, public schools have taught the Constitution is a living document, subject to modification to adapt to changing society; paper currency, backed by nothing, is money; tour form of government is a democracy, not a republic; God is not necessary, nor the author of our rights; diversity is good; multiculturalism builds strength; killing unborn children is a mother's right; and our government is not only the source of all rights and authority, but is also responsible for policing the entire world. Our law schools no longer taught original precepts of the Constitution, but instead taught judicial precedents which have "interpreted" it. Definitions of words began to change and assume meanings which resulted in confused understandings of right and wrong; legal and illegal; constitutional and unconstitutional; and even our genders have come into question. Three generations educated by the unconstitutionally created Department of Education have learned, not what is so eloquently presented in the DOI and the Constitution, but what

judges have said about them in precedent rulings, referred to as "case law".

11. The result over the past seventy years has been that courts have been reshaping the Constitution while we, trustingly, slept in our ignorance. Although this country was founded on principles set out in DOI, which recognized every American's rights come from Lord God as Sovereign and not from a king, the government, or even the Constitution, courts have gone out of their way to attack any public acknowledgement of God in an apparent effort to render all rights into privileges which can then be regulated by "sovereign" government. Roscoe Pound, as dean of Harvard Law School laid it out for his students in his 1924 book, Law and Morals at Page 14, "...the state is the unchallengeable authority behind legal precepts. The state takes the place of Jehovah handing down the tables of the law to Moses." By removing God from His historical place as Giver of Rights, the goal of using judge-made law to make government supreme and ultimate authority has been accomplished.

12. Thomas Jefferson pointed to this danger in 1819 when he wrote: "The Constitution is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please." (Jefferson Writings, Literary Classics of the US, Inc. 1984, pg 1426). These "twists" have resulted in the authority of States to control education and schools, conduct of elections, highways, supervision of the criminal and civil justice systems, commerce, pornography laws, financing and control of welfare programs, marriage, abortion, etc., being transferred

from the States to Washington and its federal courts. While the 9th and 10th Amendments were written specifically to avoid this transfer of power, this nine-member Court has been systematically overturning the wall of separation between the States and the federal government those States created.

13. Jefferson anticipated this usurpation of power when he wrote to Charles Hammond in 1821 that, "...the germ of the dissolution of our Federal government is in the constitution of the Federal judiciary, an irresponsible body...advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped from the States and the government shall be consolidated into one. Of this I am opposed."

14. These concerns of Jefferson began to become apparent in the 1960's when this Court outlawed State laws which allowed prayer and Bible reading in public schools (*Engel v. Vitale*, 370 US 421 (1962); *Abington School District v. Schempp*, 374 US 203 (1963)). Not long after that, this Court stepped in to acknowledge that killing unborn babies was protected by the Constitution in the landmark *Roe v. Wade*, 410 US 113 (1973) decision. Then, when the Constitution was no longer able to support the collusion, this Court defaulted to foreign precedents to overturn any sense of common decency or morality when it found that laws against sodomy and homosexuality were unconstitutional and allowing that the Constitution provides, "a right to engage in sodomy, a health-threatening, AIDs producing perversion which God calls 'sin'" (*Lawrence v. Texas*, 539 US 558 (2003)).

15. The result of all this "redacting" of the Constitution is, "The Constitution actually enacted and formally amended creates islands of government powers in a sea of liberty", is now, "...islands of liberty rights in a sea of governmental powers". (See Barnett, Restoring the Lost Constitution, Princeton University Press, 2004)

16. A most serious victim of this "judicial activism" has been the constitutionally protected right to trial by jury in a civil case. While no one doubts we have a guaranteed right to trial by jury, to wit:

a. The right to trial by jury is a right which "shall be preserved" and is protected by the United States Constitution at Amendment Seven;
b. The United States Congress mandated that the right to trial by jury would not be violated by the rules of procedure newly authorized in 48 Stat. 1064, 73d Cong. Sess. II. Ch. 651, (1934); and,
c. The Declaration of Independence provides evidence of the acts of tyranny committed by the King of England against the colonists by its listing of 27 grievances, the most pertinent to this case being his "depriving us in many cases of the benefits of Trial by Jury".

The lower courts have been complicit by participating in a process which denies Petitioner an opportunity to exercise his Constitutional right to trial by jury in this civil matter, as guaranteed by the Seventh Amendment.

17. The Code's "due process" is designed to bypass any access by petitioners to trial by jury. It channels petitioner through internally regulated avenues of investigation, then dumps him into Tax Court, resulting in a bench trial with no jury option available. Thence, he is funneled directly into COA, again where no trial by jury is offered. From there, to this Court where there is no trial by jury.

18. Congress provided for the protection of our right to trial by jury from the courts in 48 Stat. 1064, 73d Cong. Sess. II. Ch. 651, (1934), the act which originally enabled the rules of procedure:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia... Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.... **Provided, however, that...the right of trial by jury at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate...**". (Emphasis mine)

19. These organic laws make it very clear that trial by jury may not be imperiled by any legislative or judicial act. All officers of the court in this instant matter have taken oaths to support and maintain the Constitution the United States. To foster the idea that a Rule 56 motion, or the Code, is superior to the

Constitution, unless agreed to by all Parties, is a violation of that oath and tantamount to treason to that Constitution. Further, a process which intentionally does not provide a path to trial by jury is at "war against the Constitution". To wit:

> "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401 (1958).

20. The inclusion of the words "shall be preserved" in the Constitution leaves no room for doubt. Yet the people do not protest or revolt when the judiciary and the bureaucracy cavalierly overwhelm our Constitution and our right to trial by jury with its corrupted interpretation of Rule 56 and the Code's "due process".

21. The "trial by jury" we thought we had won in the Revolution has apparently fallen prey to the cunning coercion of our appointed and elected officials as witnessed by this instant matter. Similar to the situation prior to the Revolution, we are now deprived of the right to trial by jury by a modern interpretation of the rules of procedure and the appeals process in the Code. The right to trial by jury, originally instituted not only to protect us from offenses to our rights and liberties by individuals, but also from egregious acts of the legislature, has now been relegated to the discretion of a judge.

22. It is certainly strange that our constitutionally protected rights have been so easily abandoned when this Honorable Court has correctly opined, "Where

rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them" (*Miranda v Arizona,* 384 U.S. 436, p 491). What is much worse is that We the People have allowed it to happen, given we were warned by the Founders, "the price of liberty is eternal vigilance".

23. Thus, it is easy to recognize that our freedom and liberty no longer exist in what used to be "America", the result of our leaders allowing our "Republic" to be morphed into a democracy, or, more correctly, into fascism. The purpose of this appeal is to correct that problem, at least in the area of trial by jury.

24. Acts of the legislature and the judiciary must conform to, and be pursuant to, our Constitutions. It is not legally possible for a rule to overwhelm the Constitution, yet that is what the lower court and the Respondent would have this Court believe occurs with Rule 56 and the "due process" of the Code.

25. Petitioner realizes all lawyers are taught jurors may rule only on facts and not law. This construct has been cunningly created and nurtured by lawyers and judges for decades to the point that it is now accepted dogma, and jurors must rule on the law as judges give it to them. This is the rationale used to perpetrate the fraud on the American people that the "due process" regulations of the Code and Rule 56 allow the courts to dispense with the right to trial by jury because "everybody knows" the jury can only rule on facts and not law; thus, the unconstitutional concept that, when no "material fact" is in question, the court can freely deny trial by jury. It is time for a paradigm shift in the way the

judiciary views the "due process" regulations, and the authority it has provided for the courts to routinely dispense with trial by jury, a presumed authority under color of law and an abomination to our Constitutions.

26. Petitioner was not given opportunity to demand trial by jury because of the way the Code has cunningly denied that right to him. He has not waived his 7th Amendment right to said trial by jury. The Court must find that the lower court's decision to deny Petitioner's access to trial by jury by regulation was invalid, unless we admit that we have allowed Congress and this Court to illegally overwhelm the Constitution thru "rule making and legislation which would abrogate [it]" (See *Miranda, supra*). The power of the judiciary to dictate whether trial by jury may or may not be had in a civil case is limited by the 7th Amendment's language, "shall be preserved". Trial by jury is necessary to: (1) protect against unwise legislation and judicial practices; (2) vindicate the rights of citizens against the government; and (3) protect litigants against overbearing judges.

27. For the courts below to have sanctioned waiving Petitioner's right to a jury is treason to their oaths and to the Constitution, and merits reversal by this tribunal or remand.

Second Question Presented: **Whether or not the courts below erred by ruling Petitioner's argument the 16th Amendment has never been incorporated into the several States, either by judicial opinion or by its language, is frivolous or illogical?**

28. Much support, both in law and in legal opinion, for this argument regarding the applicability of the 16th Amendment is contained in Petitioner's petition for a CDPH at Item 6 of the continuation of Paragraph 8 in the Petition (See also Exhibit G of Declaration of Stephen Webster to the US Tax Court). The Court should also be aware the argument the 16th Amendment is limited to the federal United States and not applicable to the several States, while supported by statements related to individual liability and jurisdiction, is very simple: Does language of the 16th Amendment show, beyond reasonable doubt, it grants jurisdiction to the United States to tax earnings of State nationals, such as Petitioner, in the several States? By contrast and example, Amendments 14 and 15 specifically mention jurisdiction over the "States" and, therefore, State nationals. This question needs to be answered with facts and authority, once and for all. It is neither frivolous nor illogical. The simple remedy for this question would be for Congress or the several States to initiate an amendment to the Constitution which plainly states all earnings of citizens/residents of the several States are taxable by the United States. This will not happen until a court of valid jurisdiction, such as this Court, faces up to the fact the 16th Amendment is either lacking in clarity and must be amended, or it means just what it says and only federal earnings, or earnings generated from federal privilege, are taxable. Otherwise, this argument will never end. Petitioner requests this Court reverse the opinion of lower courts or remand

this matter for further review based upon findings of this Court.

Third Question Presented: **Whether or not the presumption by the Respondent, the Tax Court and the Court of Appeals that Petitioner's earnings were subject to the jurisdiction of the 16th Amendment and the Code is valid, despite his arguments to the contrary, when, by law,** Respondent had no authorized interest in **Petitioner's non-income earnings in the subject years:**

29. Income tax is the BIG LIE; but it can be safely assumed that nearly all attorneys, accountants, judges and employees of Respondent believe that the 16th Amendment authorizes a tax on all earnings without exception. These so-called tax experts believe government can create a tax that is both direct and indirect by the authority of the 16th Amendment. However, a power to tax without apportionment and without regard to any census or enumeration is a power limited to indirect taxation.

30. Therefore, the Congress has the power to tax the States by apportionment, but may not tax the earnings of the people of the States of that union unless those earnings fall under the jurisdiction of the United States. Congress has power to lay and collect taxes on earnings over which it has legislative authority. The only personal earnings it can tax by legislation are those of individuals exercising federal privilege. It very literally lacks jurisdiction to tax individual, non-income earnings of a State national

which are not the result of functions of public office or privilege (See 26USC7701(26)).

31. Unfortunately, most Americans have been successfully conditioned over the last 75 years to believe the tax applies to all economic activity. Concurrently, most Americans have been induced to report earnings of all kinds, including non-income earnings, to government tax agencies using forms such as W-2s and 1099s which are actually prescribed exclusively for the reporting of federally-connected tax-relevant payments. These reporting-form allegations are taken as true if unrebutted, and it is on that basis that the income tax is ultimately applied, both to those who *have* engaged in taxable activities and those who ***have not***, but aren't aware of the need to rebut the erroneous reporting-form allegations to the contrary.

32. We are led to believe that the 16th Amendment was a transformational event in the history of the United States Constitution by which an unapportioned direct federal tax on "all that comes in" was authorized. We've been told that the amendment reversed the preceding 137-year-old Constitutional tax structure prohibiting such taxes in favor of a radically different structure under which government was granted carte blanche authority to reach directly into every wallet. Explanations as to why have always been vague, typically amounting to something about a populist or progressive impulse sweeping the country in favor of sticking it to the "Robber Barons". Missing is any reason why such an impulse would embrace a universal tax reaching not just robber barons, but their alleged victims in the working class as well. Also missing from these

stories is any explanation of why the several states would ratify such a tax, under which they would inevitably lose power and significance in favor of their federal competitor. Further, these stories leave out the fact there already was an income tax on the books still in force at the time of the 16th Amendment, which had been successfully deployed over the preceding 52 years without Constitutional problem, save for a single instance in which this Court had taken issue with its application to merely two single varieties of realized income (See *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429, and 158 U.S. 601, (both 1895)). Truth is, the 16th Amendment did nothing these story-tellers want us to imagine it did. Instead, the amendment merely overruled a Supreme Court decision that had briefly interrupted the application of the already-long-standing tax while making no changes to its pre-amendment nature.

33. From its inception in 1862, the "income tax" has been an excise that applies only to gains from profitable exercise of federal privileges (and therefore needn't be apportioned), as the *Pollock* court itself noted:

> "The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate, and of personal property [dividends], being a direct tax, within the meaning of the constitution, and therefore unconstitutional and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid."

Everything else taxed as "income" is and always has been properly taxed without apportionment; because, other than as to those two exceptions, the tax is and always has been unambiguously of the character of an excise, both in how it operates and on what it falls. It cannot fall on earnings which are "non-income" and not taxable, unless the recipient renders said earnings as "taxable income".

34. The 16th Amendment says the *Pollock* court's conclusion was wrong. The amendment provides Congress can continue to apply the income tax to gains qualifying as "incomes" (that is, the subclass of receipts that had always been subject to "income" excise due to being the product of an exercise of federal privilege) without being made to treat the tax as direct and needing apportionment when applied to dividends and rents by virtue of judicial consideration of the source. The amendment doesn't transform the "income tax" into a direct tax, nor modify, repeal, revoke or affect the apportionment requirement for capitations and other direct taxes.

35. Almost immediately after the amendment was declared adopted in 1913, and income tax was revived after its 18-year hiatus since the *Pollock* decision, the application of the tax was again challenged in *Brushaber v. Union Pacific RR Co.*, 240 U.S. 1 (1916), based on a series of contentions about the 16th Amendment. This Court took the case intending to settle all issues regarding the purpose and meaning of the amendment and declaring the ongoing nature of income tax as affected thereby. The lengthy, detailed and unanimous ruling issued by this Court declares the amendment has no effect on what is and what is not subject to income tax, and

does nothing to limit or diminish apportionment provisions in the Constitution concerning capitations or other direct taxes.

36. So, the class of what qualifies as "income" subject to tax remains the same after the amendment as it had been before it. The 16th Amendment eliminated the "source" argument, but didn't change limits on what was subject to tax. If non-income earnings didn't qualify as taxable without apportionment *prior* to *Pollock* and the amendment, they *still* don't qualify as taxable without apportionment. The Supreme Court reiterates this in ruling after ruling:

> "[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id. at 2539; see also *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 17-18 (1916)". *So. Carolina v. Baker*, 485 U.S. 505 (1988)

37. There's another easy way to grasp legal reality of the "income" tax today in light of the actual meaning and effect of the 16th Amendment. That is to remember that the amendment caused no change to the apportionment rule for direct taxes. This means that taxes on general revenues and/or the unprivileged activities which produce them-- Constitutionally designated as "capitations"-- remain subject to that rule of apportionment. Thus, what income tax DOES fall on, as the excise it is, can be roughly but usefully perceived by remembering it

CAN'T fall on (or be measured by) the objects of a capitation, among which is "all that comes in".

38. Though the mechanisms by which it does so are a bit difficult to find, the tax law, as written, confines itself carefully and scrupulously to nothing but gains resulting from exercise of federal privilege, just as any federal excise tax must do. It is not by accident or oversight that the "wages" subject to the tax, or the phrase "trade or business" as used in the context of the tax, are custom-defined in the law (See 26USC7701). As written, "income" tax laws leave unprivileged non-income earnings and receipts untouched, never crossing the line into the realm of capitations. It remains a proper excise, and as such, doesn't apply to the earnings of most Americans. This *shouldn't* be surprising. Unfortunately, a mature scheme has been in place for about the last 75 years which is designed to trick those ignorant of the nuances of law into inadvertently declaring their unprivileged non-income earnings to be privileged, submitting a Form 1040 signed under penalty of perjury, and allowing government to treat those earnings as "income" subject to tax.

39. The 16th Amendment never authorized an unapportioned general tax on "everything which comes in". After all, the 16th Amendment is a Constitutional amendment, highest possible expression of popular will possible. Not by any stretch of imagination would the people place such an onerous tax on their own non-income earnings. Yet, the highly unlikely mythology about the amendment says it was intended to authorize a universal tax on everyone's revenue. 30 years went by after its adoption in 1913 before more than a

small fraction of Americans were affected in any way by the income tax. Plainly, had the 16th Amendment actually been meant to authorize a universal tax, we would have seen income tax filings by every adult American no later than 1914 and every year from there forward.

40. It was not until the early 1940s, in the midst of World War II, after decades of relentless disinformation about the nature of the 16th Amendment and the meaning of "income", the percentage cracked 50%. This campaign of disinformation was assisted by increasing state influence in schools, propaganda resources which included exhortations by the likes of Donald Duck, and ten years of deep mental softening during the rigors of the Great Depression. Needless to say, no such campaign would have taken place had the 16th Amendment actually authorized the general tax in which you are encouraged to believe. Unfortunately, the campaign succeeded.

41. It should be intuitively obvious to this Court the self-employment non-income earnings received by the Petitioner, whether actually or constructively, in '08 and '12 in no way qualified as taxable earnings from the privileges of a "trade or business" (See 26USC1402(a) for definition of "taxable income from self-employment"). These earnings were solely from the sale of private lands not in any way related to "functions of a public office" (See 26USC7701(26) for the definition of "trade or business") or the result of exercise of any federal privilege. Respondent had no authorized interest in Petitioner's non-taxable earnings from self-employment and lacked

jurisdiction to assess any income tax liability against Petitioner.

42. Respondent has denied Petitioner the due process of explaining to him why arguments in support of this issue are invalid during the entire duration of this matter. The supporting arguments in Item 7 of the continuation of Paragraph 8 of Petitioner's petition for CDPH (See Exhibit G of Declaration of Stephen Webster to the US Tax Court) are numerous and compelling but can be summed up by one quotation from *South Carolina v. Baker*, 485 US 505(1988):

> "The legislative history merely shows that the words "from whatever source derived" of the 16th Amendment were not affirmatively intended to authorize Congress to tax state bond interest or to have any other effect on which incomes were subject to federal taxation, and that the sole purpose of the 16th Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable."

43. It is clear, based upon arguments referenced herein and discussion of the "Second Question Presented", *supra*, the question of whether or not Respondent has jurisdiction over Petitioner's earnings must be answered with a resounding, "NO"! Since Petitioner has not rendered his earnings for taxation by the United States as "income", thereby granting such authority, no jurisdiction exists. Therefore, since the question of jurisdiction may be challenged at any time, this Court is requested to reverse the opinion of the lower courts, or to remand this matter for further review based upon the findings of this Court.

Fourth Question Presented: **Whether or not the courts below erred by ruling Petitioner's argument the tax on his non-income earnings was invalid due to lack of jurisdiction was frivolous, illogical or precluded:**

44. It appears Tax Court mistook this item for a liability argument when it very pointedly goes to whether or not Respondent has any jurisdiction over Petitioner or his earnings. It comes down to the question of, "Why are we here?" In his discussion of this question in Item B of Attachment A to his Petition to the Tax Court, Petitioner specifically argued the laws which allegedly grant Respondent jurisdiction over him and his earnings, do not. The fundamental standard of whether or not a statute grants jurisdiction/authority is contained in the following quote from *Gould v. Gould*, 245 U.S.151 at 153 (1917):

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the Government and in favor of the citizen."

45. IRS Privacy Act Notice #609 states: "Our legal right to ask for information is Code sections 6001, 6011, and 6012 and their regulations. They say that you must file a return or statement with us for any tax you are liable for."

46. Section 6001 states in pertinent part: "Every person liable for any tax imposed by this title.....shall keep such records, render such statements, make such returns.....".

47. Section 6011 states in pertinent part: "When required by regulations prescribed by the Secretary, any person made liable for any tax imposed by this title... shall make a return or statement....".

48. Section 6012 states in pertinent part: "Returns with respect to earnings taxes under subtitle A shall be made by the following: (1) Every individual having for the taxable year gross earnings which equals or exceeds the exemption amount, except that a return shall not be required....."

49. These sections above state that one must file a return in respect to earnings taxes if one is a "person liable" or a "person made liable" and he has for the "taxable year" under subtitle A, gross earnings exceeding the exemption amount.

50. It is VERY IMPORTANT to Note that Section 6012 is subservient to Sections 6001 and 6011. This can be seen from 26 USC Section 6011(f) which states: "For requirements that returns of earnings, estate and gift taxes be made whether or not there is a tax liability, see subparts B and C." Section 6012 is the first section of subpart B.

51. Section 6011(f) instructs any filing requirements under Section 6012 are subservient to prerequisites of Section 6001 and 6011. Thus, one must first be "liable" or "made liable" for tax before any obligation is imposed. This begs the question,

"Where Is the Law Requiring One to File or Pay Earnings Tax". This very question was decided by a jury in a federal district court criminal case in Eastern District of Tennessee, case of *U.S. v Long*, #CR-1-93-91 (10/15/93), introduced here merely as reference, in which the jury decided there was no such law.

52. Under subtitle A, earnings tax is imposed on the specific legally defined term "taxable earnings" of "taxpayer" individual. The term "taxpayer" is generally defined at section 7701(a) as "any person subject to any internal revenue tax," and specifically defined at Section 1313(b) as being "any person subject to a tax under the applicable revenue law."

53. Literal reading of sections 6001, 6011 and 6012 shows one must first be liable, or made liable, to be a "taxpayer" (as that term is defined in the Code) to have "taxable earnings." At minimum, one must already be obligated to waive rights in order to have a "legal duty" to comply with earnings taxing statutes of the Code.

54. Again, it is very important to note and be able to distinguish between terms "liable for tax" and "have a tax liability." It is possible to be a "person liable", or a "person made liable", for a tax and have no tax liability (As in the question as to whether "self-employment" earnings are "earnings from a 'trade or business'"). However, it is impossible to have a "tax liability" if one is not a "person liable" or a "person made liable."

55. The 7th COA has emphasized specific restrictive nature of the term "taxpayer," following

the general restriction on any statutes imposing an obligation, as expressed by this Court in *Gould v. Gould* (cited above), when the court stated:

> "Since the statutory definition of 'taxpayer' is exclusive, the federal courts do not have the power to create non-statutory taxpayers for the purpose of applying the provisions of the Revenue Acts." *C.I.R. v. Trustees of Lumber Inv. Assn.; Trustees of Lumber Inv. Assn. v. C.I.R.; Randolph Lumber Co. v. C.I.R.*; Nos. 6435 - 6437; 100 F2d 18 at 29 (7th Cir. 1938).

56. As per *Gould v. Gould*, the statute making one liable must be clear in its language. To ascertain a standard for what is a clearly stated statute imposing "legal duty," we can simply look in Title 26 of the Code, where there are specific sections for other taxes which do clearly state when one is "liable" or "made liable" and where a reasonable man can clearly understand that which meets the *Gould v. Gould* requisite.

57. Further, Where the Code is concerned, 26USC7621 authorizes the President to establish internal revenue districts of the United States. By way of 3USC301, Congress authorized the President to delegate authority vested in him by statute. The President authorized the SecTreas to establish internal revenue districts via Executive Order 10289, as amended. This executive order is published at 3USC301. One may verify that E.O. 10289 is the authority by consulting 26CFR301.7621-1.

58. Now refer to the Parallel Table of Authorities and Rules on page 773 in the left column. There are

no implementing regulations for 26USC7621, i.e., there are no internal revenue districts in the several States of the Union. See also 26CFR601.702(a)(2)(ii), Effect of failure to publish [in the Federal Register]: "Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a)(1) of this section which is required to be published in the Federal Register, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference." (See item F of Petitioner's Petition to the Tax Court for more detail.)

59. Thus, the question before Tax Court and COA was not one of "liability" but one of jurisdiction; and the courts below went the wrong way. (Also see Item B in Attachment A of Petitioner's Petition to the Tax Court for more detail). Therefore, Petitioner requests this Court reverse the opinion of the lower courts or remand this matter for further review based upon findings of this Court.

Fifth Question Presented: **Whether or not the courts below erred by ruling against Petitioner's argument Respondent lacks jurisdiction over Petitioner because he has no statutory power of distraint over Petitioner under Subtitle A, Income Tax, of the Code:**

60. Here, again, we find a question of jurisdiction mistaken by the courts below for a question of liability. See 27 CFR, Chapter 1, Subchapter F, Part 70, to find that all power of distraint enforcement of the IRS is connected to and through the BATF. As

stated above, the IRS is not allowed to use USC Title 27 enforcement regulations to collect USC Title 26, Subtitle A, income tax liabilities; since IRS is not allowed to use any "enforcement" regs from any USC Title other than Title 26.

61. All Title 26 code section violations have to have a Title 26 "enforcement" regulation in the Parallel Tables of Authority. There are no enforcement regulations (meaning collection regulations) contained in Subtitle A for any Title 26 violations.

62. Title 26 enforcement regulations must be "approved" by Congress; but there are apparently no enforcement regulations for any Title 26 violations. Why? Because, it appears the whole 1040 tax return scheme is 100% "VOLUNTARY" except to those who are liable as discussed above. When someone doesn't file a 1040 tax return and agree to pay income taxes, they are "effectively" un-volunteering. Thus, Congress gave no "authority" to Respondent to file a lien or levy; seize anyone's bank account or land; or garnish their wages, pensions, or social security payments. This is why there are no valid enforcement regulations in the Parallel Table of Authority promulgated in the Code of Federal Regulations (CFR).

63. Therefore, all IRS-generated Notices of Tax Lien and Notices of Tax Levy are unenforceable and do not constitute Notice, as IRS has no powers of distraint. Every bank account seizure, wage garnishment or pension seizure by Respondent is, therefore, an illegal "taking". One must believe, at some level, Respondent knows it has no authority

from Congress to seize anyone's bank accounts or other assets as they have **never had any authority from Congress** even to send anyone an "Amount Due" notice.

64. See 1CFR21.21, "General Requirements – References" at paragraph (c), "Each agency shall **publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication in full text...". (37FR23611, Nov. 4, 1972, as amended at** 50FR12468, Mar. 28, 1985); and, CFR21.40, "General **Requirements – Authority Citations (50FR12468,** Mar. 28, 1985).

65. **Therefore, Petitioner requests this Court** reverse the opinion of the lower courts, or remand this matter for further review based upon the **findings of this Court.**

Sixth Question Presented: **Whether or not the courts below erred by ruling Petitioner's argument is frivolous or illogical he was denied due process by the Respondent throughout this affair:**

66. Since Petitioner was first notified by Respondent on or about May 17, 2017, that he might have additional tax liability for taxable years '08 and '12, he has sought from Respondent justification, verification and legality of said liabilities, but with very limited success. As detailed in Item 3, with attachments, in his petition for a CDPH; at Exhibit G of Respondent's "Declaration of Stephen M. Webster; and at Item M of his petition to Tax Court, his inquiries were received and ignored by

Respondent, which only responded with a continuous flow of notifications from 45 to 120 more days were required for them to give him a complete answer, which answer was never received. The primary excuse now given is the questions he raised in his inquiries were either "frivolous or illogical". While that may be true for certain of his aversions, they are not present in this brief; and this is not stipulated. Under the smokescreen of "frivolous or illogical", Respondent, Tax Court and COA seek to bury Petitioner's sincere efforts to understand the apparent failings of "income" tax assessment and collection apparatus, as it applies to him. This effort by Respondent is consistent throughout its defenses to this argument by Petitioner as well as those listed below. Unfortunately, the Tax Court and COA have been willing accomplices in this subterfuge. Respondent's show of "due process" was but a hollow promise in bad faith which must be recognized by this Court as such and corrected by either reversing the opinion of COA, or remanding this case to the lower courts for review.

Seventh Question Presented: **Whether or not the courts below erred by ruling Petitioner's argument Respondent's report of events in Notice of Determination was not demonstrative of lawful due process was frivolous or illogical:**

67. Notice of determination by Respondent focuses on allegations Petitioner failed to offer any "collection alternatives", and he was given a "hearing". First, Petitioner fails to understand the necessity of a "collection alternative" when all his remedies have not been exhausted. That would be tantamount to confessing to a crime and admitting culpability

before any evidence had been heard. It makes no sense. How not pleading guilty can be held against someone does not seem like an exercise of due process. Secondly, the Appeals Team Manager wants this court to believe Petitioner was "granted a telephonic hearing". In fact, what he received was an unexpected phone call fashioned as a "telephonic hearing" when, in fact, none was ever held. In other words, a very "Kafkaesque" situation. Added caveats of failure to "provide [financial] documentation" in support of a "collection alternative", and introduction of "frivolous issues", sealed the deal for Respondent. However, the Respondent's failure to identify any "frivolous issues", instead making merely conclusory statements to that effect, tends to create the appearance of fraud by Respondent. It doesn't look like "due process".

68. As to "substantive matter [being] discussed" during the February 6, 2020, phone call with Mrs. Rego of the IRS, it was more of Petitioner being told what he could not do; and that his options were played out: Any "challenge to the liability is precluded"; The "Final Notice could not be rescinded"; and offers of premature collection alternatives were refused. It was more of a lecture than a hearing. By that "due process", Respondent had "filled the square". The promise of a hearing is not a hearing.

69. Respondent contends that "an assessment was properly made for each tax...", but overlooks the fact that not one of Petitioner's questions or requests (some of which are discussed below) asking for information regarding the tax was answered by Respondent with other than letters notifying

Petitioner that more time was required for a more complete response. Again, more smoke and mirrors in this Kafkaesque method of avoiding substantive responses. This tactic of being non-responsive to pertinent questions is not an accident, but goes to the heart of Petitioner's complaint of lack of due process. Petitioner calls the Court's attention to Items 1-5 and 11 of his Request for a CDPH as examples of points which are not "frivolous" and which seek review of issues definitely not related to whether or not Respondent's "assessment was properly made for each tax". These are questions of law which were not addressed by Respondent at all.

70. In the conclusion of the Notice of Determination, labeled "Balancing Analysis", the opening statement, "The proposed levy action balances the need for efficient collection of taxes", is no more than "boilerplate". Petitioner, to his knowledge, never suggested that "any collection action be no more intrusive than necessary". As to "challenges of liability" being precluded, that is pure nonsense. If there is no debt, how can there be a collection? The matter of the validity of the debt can never not be a part of the discussion, especially when the primary question is whether or not Respondent has jurisdiction to assess tax on Petitioner's non-taxable earnings. The comment that Petitioner "solely raised a challenge to the liability" is untrue.

71. Therefore, this Court is requested to reverse the opinion of the lower courts or to remand this matter for further review based upon findings of this Court.

Eighth Question Presented: **Whether or not the courts below erred by ruling that Petitioner's**

argument that Respondent lacks authority to create an SFR for a Form 1040 was frivolous or illogical:

72. This issue goes more to jurisdiction than liability. Without jurisdiction, there can be no liability. Upon information and belief, the NOD upon which this matter is based was developed from an SFR issued by Respondent under the auspices of IRM 5.1.11.6.7 (03-13-2013) and IRC 6020(b). These authorities show no authority exists for Respondent to create an SFR for form 1040.

73. The 26USC6020(b) authority to seize assets by levy/distraint granted to CIR by 26CFR301.6020-1(b) and 26CFR301.7701-9 is limited by Order No. 182 (12-14-83), "Authority to Execute Returns", to those forms related to employment, excise and partnership tax returns and listed specifically as Forms 940, 941, 942, 943, 2290, CT-1 and 1065. No reference made, or authority given, to execute a return (SFR) for any Form 1040.

74. This limitation of authority is also contained in IRM Section 5291 (11-15-85) wherein authority of Respondent is similarly limited to employment, excise and partnership tax returns including Forms 940, 941, 943, 11-B (Rescinded 1980), 2290, CT-1 and 1065. Again, no mention of any authority for completing an SFR for Form 1040.

75. These are statutes, laws and regulations which mean what they say and say what they mean.

If referring to these items as a defense is frivolous or illogical, we are in deep trouble. Based upon this lack of jurisdiction, Petitioner requests this Court reverse the opinion of lower courts or remand this matter for further review based upon findings of this Court.

Ninth Question Presented: **Whether or not the courts below erred by ruling that Petitioner's argument there are no implementing regulations for 26USC6020 in the Federal Register is frivolous or illogical:**

76. Respondent pretends to validate its actions under 26USC6020, *et seq.*, to levy and seize valuable assets from Petitioner pursuant to a perceived liability under the Code, Subtitle A. Authority for Respondent to proceed with these actions of distraint is predicated upon there being implementing regulations promulgated by SecTreas, or his delegates, in the Federal Register and administered in the form of Code of Federal Regulations to provide authority for such actions. By reference, Petitioner submits the IRM affords Respondent no such authority. Thus, lacking implementing regulations to authorize such actions by IRS, Respondent lacks any authority to enforce 26USC6020 against Petitioner.

77. Petitioner requests the Court take judicial notice of letter dated May 16, 1994, from Mr. Michael L. White, Attorney for the Office of the Federal Register, and addressed to Mr. Richard Durjak on the subject of enforceability of specific sections of 26USC including, but not limited to, Section 6020. Quoting again from said letter:

> "The Director of the Federal Register has asked me to respond to your inquiry. You have asked whether Internal Revenue Service provisions codified at 26 U.S.C 6020, 6201, 6203, 6301, 6303, 6321, 6331 through 6343, 6601, 6602, 6651, 6701, and 7207 have been processed or included in 26 CFR part 1.
>
> "The parallel Table of Authorities and Rules, a finding aid Compiled and published by the Office of the Federal Register (OFR) as a part of the CFR Index, indicates that implementing regulations for the sections cited above have been published in various parts of title 27 of the Code of Federal Regulations (CFR). **There are no corresponding entries for title 26.**" (Emphasis added)

78. Petitioner interprets this above statement to be an unequivocal admission Respondent lacks any enforcement authority under 26USC6020. Respondent's efforts at levy/distraint under said section of the Code are untenable and must be rejected. Therefore, Petitioner requests this Court reverse the opinion of the lower courts, or remand this matter for further review based upon findings of this Court.

Tenth Question Presented: **Whether or not the courts below erred by ruling that Petitioner's argument 26USC, Subtitle A, is void for vagueness is frivolous or illogical:**

79. Pronouncement of void for vagueness doctrine was made by Justice Sutherland in *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926):

> "[T]he terms of a penal statute [...] must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties... and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

80. Void for vagueness doctrine is a constitutional rule. This rule requires laws are so written they explicitly and definitely state what conduct is punishable. Vagueness doctrine thus serves two purposes. First: Persons receive fair notice of what is punishable and what is not. Second: Vagueness doctrine helps prevent arbitrary enforcement of laws and arbitrary prosecutions. "Fair notice" is certainly not the case with income tax laws.

81. There are numerous ways in which the Code is deliberately vague: The vagueness of "who is liable"; what incomes are not taxable incomes; and, the absence of any legal definition for the term "income". IRS thinks it can enforce the Code as a tax on everything that "comes in", but nothing could be further from truth. "Income" is decidedly NOT everything that "comes in", nor are all earnings "from whatever source derived" taxable incomes, as described above. More importantly, the fact that this

vagueness is deliberate is sufficient grounds for concluding that the entire Code is null, void and unconstitutional for violating our fundamental Right to know the nature and cause of any accusation (Sixth Amendment). It is beyond question from arguments, quotes and examples contained herein that the Code is "void for vagueness".

82. Whether vagueness is deliberate or not, any statute is unconstitutionally void if it is vague. If a statute is void for vagueness, the situation is the same as if it had never been enacted at all. For this reason, it can be ignored entirely. Such is the case with 26USC, Subtitle A. Therefore, Petitioner requests this Court reverse the opinion of lower courts, or remand this matter for further review based upon findings of the Court.

Conclusion

83. Right to trial by a jury of one's peers is meant to be the fourth branch of the government. It is the final opportunity for people, individually, to achieve justice before the law. While Founders and Framers obviously intended to bind the other three branches of the government by the "chains of the Constitution", the People were to be left with the ultimate and absolute power to overwhelm that "unwilling servant and...fearsome master" by the power of the "fourth branch" in the jury box. What the judiciaries in the United States and the several States have done over the past unknown number of years is to subvert that power by castrating it from the beginning and taking the power of those Constitutional chains away from the jury, by simply taking the Constitution out of their oaths. This,

along with the arguably treasonous application of "summary judgment", has been a useful tool for the judiciary to absolutely control outcomes, not only in bench trials, but also in jury trials. By "relieving" juries of any responsibility for interpreting constitutionality of the law, the trial court judges have become tyrants, despots and dictators. I do not accept that the learned men and women of the judiciary who ignore these constitutional dictates are uninformed. Their opinions fly in the face of both law and the Constitution, and are nothing less than treason to the Constitution and the law.

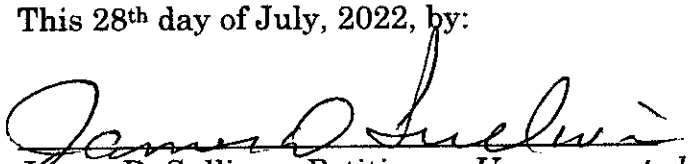
84. It is imperative in the name of justice and law that this Court grant this petition for certiorari, reverse orders of lower courts and remand this matter with the finding I was denied a proper trial by jury and the 16th Amendment did/does not grant the United States *carte blanche* access to all the earnings gathered by the people of the several States.

Relief Requested

85. Therefore, and for good and just cause shown, Petitioner moves this Court issue an Order reversing the ruling of Tax Court and COA and requiring Respondent to Cease and Desist and to be restrained from any further collection efforts against Petitioner. In the alternative, Petitioner requests this Court provide sufficient findings of fact and conclusions of law to support any ruling opposed to arguments contained herein; as claims by Respondent, Tax Court and COA that all the above arguments are frivolous, illogical, precluded, or lacking any basis in law are not only ridiculous and incredulous, but are

also an insult to this Court. Petitioner has presented sufficient statutory law, court precedents and regulatory arguments to dispel any idea his arguments are less than convincing. His arguments are not about numbers or calculations presented by Respondent but are about the jurisdiction over his earnings claimed by Respondent.

This 28th day of July, 2022, by:



James D. Sullivan, Petitioner, *Unrepresented*
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UNITED STATES TAX COURT
Washington, DC 20217

James D. Sullivan)
Petitioner,)
v.) Docket No. 11738-20L
Commissioner of Internal)
Revenue,)
Respondent)

ORDER AND DECISION

This collection due process (CDP) case brought under section 6330(d)(1) is before the Court of cross-motions for summary judgment filed by the parties pursuant to Rule 121.[1]

On February 25, 2021, respondent filed a motion for summary judgment along with a declaration of Steven M. Webster[2] in support of the motion. In the motion, respondent contents that no genuine dispute exists as to any material fact and that the determination of the Internal Revenue Service (IRS) Independent Office of Appeals (Appeals) approving a notice of intent to levy (levy notice) with respect to petitioner's unpaid Federal income tax liabilities for the 2008 and 2012 taxable years should be sustained as a matter of law.

By Order served on March 4, 2021, the Court ordered petitioner to file a response to respondent's motion

[1] Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect at all relevant times. Some monetary amounts are rounded to the nearest dollar.

[2] Mr. Webster is one of respondent's counsel of record in this case.

no later than March 17, 2021. On March 11, 2021, petitioner filed a motion for summary judgment. In his motion, petitioner agrees with respondent that summary adjudication of this case is appropriate because no material facts are in dispute but contends that the Court should enter judgment against the respondent and in his favor. On March 29, 2021, petitioner then filed an objection to respondent's motion for summary judgment. In his objection, petitioner set forth in pertinent part that the arguments set forth in his petition are not frivolous, that he is able to dispute his underlying tax liability because he had no earlier opportunity to dispute the merits of the tax liabilities, "[t]here was no valid due process hearing provided***[to him] in which he could play a meaningful part."

Background

Respondent determined deficiencies in petitioner's Federal income tax of #223,162 and $77,966 and additions to tax pursuant to section 6651(a)(1) of $55,791 and $19,492 for 2008 and 2012, respectively. Respondent also determined an addition to tax pursuant to section 6654 pf $83 for 2008 and an accuracy penalty pursuant to section 6662 of $15,593 for 2012. On July 3, 2017, the Court filed a document from petitioner seeking redetermination of the deficiencies, additions to tax, and penalty. See Sullivan v. Commissioner, Dkt. No. 14612-17. On August 9, 2017, the Court, however, dismissed petitioner's case for lack of jurisdiction on the grounds that petitioner had failed to pay the Court's filing fee (or request a waiver of the fees) and file a proper amended petition despite an order of the Court directing him to do so. Id.

On December 26, 2017, the IRS assessed against petitioner the 2008 and 2012 Federal income tax liabilities. When petitioner failed to pay the assessed liabilities, despite the IRS' providing him with notice and demand of the balances due, the IRS sent petitioner a levy dated April 29, 2019.[3]

In response to the levy notice, petitioner timely submitted Form 12153, Request for Due Process or Equivalent Hearing (CDP hearing request). In his CDP hearing request, petitioner requested that the levy notice "must be rescinded" for several reasons; these reasons were either frivolous or illogical.[4]

Appeals Officer Rego (AP Rego) sent petitioner a letter dated October 22, 2019, acknowledging receipt of this CDP request and scheduling a telephone CDP hearing with him on December 10, 2019. She also outlined the issues she had to consider during the hearing and informed petitioner that in order for her to consider collection alternatives he must submit to

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[3] The levy notice advised petitioner that the IRS intended to levy to collect his outstanding liabilities for 2008 and 2012 which, through the date of the levy notice, totaled $583,002, and that he had a right to a hearing to appeal the proposed collection action. The levy notice also advised petitioner that the IRS might file a notice of Federal tax lien at any time to protect its interest.

[4] For example, as his first reason, petitioner stated: The IRC is only applicable in DC and US Territories for those born in US Territory, who work for the National Government, or are US Resident Aliens. At all times relevant to this inquiry, the IRC did not apply to me. I was born in one of the 50 states and thus not subject to the territorial jurisdiction of DC and US Territories. I did not work for, or receive income from, the National Government in any capacity, and was not a US Person (a US Taxpayer). I am not one described in IRC6331(a) as a federal employee, officer or or [sic] elected official. Thus, I received no "taxable income", the levy is invalid, and the NOIL [i.e., the levy notice] must be rescinded.

her within 14 days a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, proof that estimated tax payments paid in full for the year to date, six months of personal bank statements, proof of all income and expenses, and a most recent mortgage statement. Additionally, she advised petitioner that or more issues raised in his CDP hearing request had been identified by the IRS as frivolous and listed in IRS Notice 2010-3 or (if not identified as frivolous) reflected a desire to defy or impede Federal tax administration. Further, she advised petitioner that he would not be afforded a face-to-face hearing if the issues he desired to discuss included frivolous issues or issues that the IRS considered an attempt to defy or impede Federal tax administration, he might be allowed a face-to-face hearing on any legitimate issue he raised if he were to withdraw, within 30 days, the frivolous issues or the issues considered an attempt to delay or impede Federal tax administration. Finally, she warned petitioner that if he did not amend or withdraw his CDP hearing request, his case would be sent back to IRS Collection and that he might be subject to a $5,000 penalty pursuant to section 6702(b).

On December 10, 2019, AO petitioner did not call AO Rego at the appointed time for the telephonic CDP hearing. Later that same day, AO Rego sent petitioner a follow-up letter wherein she requested that he call her within 14 days and if he did not, Appeals would make a determination by reviewing his administrative file and whatever information he had provided.

In response to AO Rego's December 10, 2019, letter, petitioner sent her a letter dated December 19, 2019, advising that he has not received her October 22, 2019, letter and thus was not aware of the December 10, 2019, telephonic CDP hearing. He requested that she reschedule the hearing and resend her request for information. Finally, he asserted that his CDP request "was not for reasons of delay or an attempt to argue any frivolous or groundless positions".

In response to petitioner's December 19, 2019, letter, AO Rego sent petitioner a letter dated February 6, 2020, advising him that she had attempted to contact him by telephone after receipt of his letter. She also explained that he was precluded from challenging his underlying tax liabilities for 2008 and 2012 because he had had a prior opportunity to do so when he filed a petition with the Court. She also explained, citing Internal Revenue Manual pt. 5.11.1.3.3.9(2) and (4) (Aug.1, 2014), that by making a timely CDP hearing request, the levy notice could not be rescinded. She also advised petitioner that he would need to provide certain documentation to her by February 20, 2020, if he sought a collection alternative; otherwise, she would make a determination to sustain the levy notice.

Petitioner did not send AO Rego the requested documentation; instead, he sent her a letter dated February 20, 2020, in which he raised frivolous issues, disputed his underlying tax liabilities, and requested a face-to-face hearing. He also stated that he was not interested in any collection alternative.

In response to petitioner's February 20, 2020, letter, AO Rego sent petitioner a letter dated February 25,

2020, acknowledging receipt of his February 20, 2020, letter and reiterating why he had a prior opportunity to challenge his underlying liabilities for 2008 and 2012 and thus could not challenge these liabilities during the CDP hearing. She also denied his request for a face-to-face hearing and explained why. Finally, she advised petitioner that if he wished to pursue a collection alternative, he would need to provide to her y March 10, 2020, the documentation she had requested in her February 6, 2020, letter; otherwise, she would make a determination to sustain the levy notice.

In response to AO Rego's February 25, 2020, letter, petitioner sent her a letter dated March 10, 2020, in which he asserted he had not received an opportunity for any CDP hearing because (1) he had not received AO Rego's October 20, 2019, letter notifying him of any December 10, 2019, telephonic CDP hearing and (2) his "second opportunity" was "merely my return of your phone call with absolutely no advance knowledge that you were expecting a telephonic hearing". Additionally, he added how the IRS had "ignored my requests, my arguments and the points of law I have made although they come directly from the IRC". He also again stated that he was not interested in any collection alternatives.

After receiving petitioner's March 10, 2020, letter, AO Rego discussed the case with the Appeals Team Manager, who advised her that petitioner's request for a face-to-face hearing should be denied because (1) a telephonic CDP hearing had already been held, (2) the challenge to the tax liability was precluded, and (3) no collection alternative had been offered. On June 18, 2020, AO Rego informed petitioner of

the decision and that the levy notice would be sustained. Accordingly, on August 19, 2020, Appeals issued to petitioner a notice of determination sustaining the levy notice. A summary detailing the matters considered by Appeals and its conclusions was attached to the notice of determination and included the following explanations:

SUMMARY AND RECOMMENDATION

> All legal and administrative procedures were followed when the Final Notice of Intent to Levy was issued. You were challenging the tax liability; however, the challenge to the tax liability is precluded in this hearing. You had a prior opportunity when you petitioned the Tax Court and the Tax Court rendered a decision to dismiss for lack of jurisdiction after you failed to file an amended petition and pay the court filing fee. You also requested a recission of the Final Notice, however, the Final Notice cannot be rescinded once a request for a Collection Due Process request [sic] is made. You did not offer a collection alternative. In addition, you requested a face-to-face hearing after you had already been granted a telephonic hearing. It was determined that since you had already had your hearing, the challenge to the liability is precluded and you are not offering a collection alternative, that your request for a face-to-face hearing is denied. Therefore, the issuance of the Final Notice of Intent to Levy is sustained, and the proposed levy action is appropriate.

LEGAL AND ADMINISTRATIVE REVIEW

Appeals Officer Rego verified the requirements of any applicable law or administrative procedure were met. IRS records confirmed the proper issuance of the notice and demand, Notice of Intent to Levy and/or Notice of Federal Tax Lien (NFTL) filing, and notice of a right to a Collection Due Process (CDP) hearing.

ISSUES YOU RAISED

Collection Alternatives Requested
You offered no alternatives to collection

Challenges to the Liability
You disagree with your liability because do not believe you owe the liability. However, the challenge to the liability is precluded. You had a prior opportunity when you petitioned the Tax Court and the Tax Court rendered a decision to dismiss for lack of jurisdiction after you failed to file and amended petition and pay the court filing fee.

You raised no other issues.

BALANCING ANALYSIS

The proposed levy action balances the need for efficient collection of taxes. The Appeals Officer considered your legitimate concern that any collection action be no more intrusive than necessary. However, you solely raised a challenge to the liability and that challenge is precluded. You also did not offer a collection

alternative. Therefore, the proposed levy action is appropriate, and the issuance of the Final Notice is sustained.

On September 14, 2020, petitioner, while residing in North Carolina, timely filed a petition with this Court for review of the notice of determination. In his petition, he makes numerous arguments that are frivolous in nature, his primary argument appears to be that the internal revenue laws do not apply to him and that he is not precluded from raising issues related to his underlying liabilities.

Discussion

The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted where the moving party shows through "the pleadings***and any other acceptable materials, together with the affidavits or declarations, if any,***that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); See also Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party to demonstrate that there is no genuine dispute as to any material fact; consequently, factual inferences will be viewed in a light most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). The nonmoving party may not rest upon mere allegations or denials of his pleading, but must set forth the facts showing that there is a genuine

dispute for trial. Rule 121(d); Sundstrand Corp. V. Commissioner, 98 T.C. at 520. The parties agree that there is no genuine dispute as to any material fact. Consequently, we may render a decision as a matter of law.

Under section 6331(a), if any person liable to pay any tax neglects or refuses to do so after notice and demand, the Commissioner is authorized to collect the unpaid amount by way of a levy on all property belonging to such a person upon which there is a lien. Pursuant to section 6330(a), the Commissioner must provide the person with written notice of an opportunity for an administrative hearing to review the proposed levy.

If an administrative hearing is requested in a levy case, the hearing is to be conducted by Appeals. Sec. 6330(b)(1). At the hearing, the taxpayer may raise any relevant including spousal defenses, challenges to the appropriateness of the collection action, and collection alternatives. Sec. 6330(c)(2)(A). A taxpayer may contest the existence or amount of the underlying tax liability at the hearing if the taxpayer didn't receive a notice of deficiency with respect to the liability or did not otherwise have an earlier opportunity to dispute the tax liability. Sec. 6330(c)(2)(B); Sec. 301.6330-1€(3)Q&A-E2, Proced. & Admin. Regs.; Kuykendall v. Commissioner, 129 T.C. 77, 80 (2007); Shere v. Commissioner, T.C. Memo. 2008-8, slip op. at 10. Following the hearing, the Appeals officer must take into consideration: (1) whether the requirements of applicable law and administrative procedure have been met, (2) all relevant issues raised by the taxpayer, and (3) whether any proposed collection action balances the

need for the efficient collection of taxes with the legitimate concern of the taxpayer that collection be no more intrusive than necessary. Sec. 6330(c)(3), see also Lunsford v Commissioner, 117 T.C. 183, 184 (2001).

Section 6330(d)(1) grants this Court jurisdiction to review the determination made by Appeals in a levy case. Where the underlying liability is properly at issue, the Court reviews any determination for abuse of discretion; that is, whether the determination was arbitrary, capricious, or without a sound basis in fact or law. Hoyle v. Commissioner, 131 T.C. 301, 308 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Goza v. Commissioner, 114 T.C. at 182.

Petitioner's primary complaint throughout the CDP hearing process was directed towards his underlying liabilities for 2008 and 2012. An now before this Court, he continues to do the same. However, the law is clear: if a taxpayer received a notice of deficiency with respect to the underlying liability or had an earlier opportunity to dispute the liability, he may not contest the liability in a CDP a hearing (or thereafter in this Court). See sec. 6330(c)(2)(B); sec. 301.6330-1(e)(3) Q&A-E2, Proced. and Admin. Regs.; Kuykendall v. Commissioner, 129 T.C. at 80; Shere v. Commissioner, slip op. at 10. The undisputed facts confirm that petitioner received a notice of deficiency for 2008 and 2012. He then petitioned this Court but never filed a proper amended petition or paid the required filing fee as directed to do so by this Court. The resulting case was dismissed for lack of jurisdiction because of his failures. Thus, his underlying liabilities for 2008 and 2012 are not at

issue and we will review Appeals determination for abuse of discretion only.[5]

Petitioner also asserts that he never received a (telephonic) CDP hearing. However, the record reflects that petitioner's primary method of communication during the CDP Process was through mailed correspondence. AO Rego attempted to call petitioner several times and had been corresponding with petitioner via mail because that was the way he communicated with her. She explained in her letters to him why he could not challenge his underlying liabilities and by his own admission he was not seeking a collection alternative. These communications with petitioner collectively constituted his CDP hearing; he thus received all the process that was due to him. See sec. 301.6330-1(d)(2) Q&A-D6, Proced. & Admin. Regs. ("A CDP hearing may, but is not required to, consist or a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof."); Ragsdale v. Commissioner, T.C. Memo. 2019-33, at *23-*24.

On the basis of our review of the record, we find that AO Rego considered all of the requisite factors under section 6330(c)(3) when making her determination. The record shows that she (1) verified that all legal

[5]Even if petitioner's underlying liabilities were properly at issue, his arguments in regards thereto are frivolous in nature. As such, [w]e perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit". Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

and procedural requirements were met, (2) considered all issues petitioner properly raised, and (3) determined that the proposed collection action appropriately balances the need for the efficient collection of taxes with the legitimate concern of petitioner that the collection action be no more intrusive than necessary. Thus, it cannot be said that AO Rego abused her discretion in sustaining the levy notice, and we do not find that the notice of determination was arbitrary, capricious, or without a sound basis in fact or law. Accordingly, we grant respondent's motion and deny petitioner's motion. Upon due consideration, it is hereby

ORDERED that respondent's motion for summary judgment, filed February 25, 2021, is granted. It is further

ORDERED that petitioner's motion for summary judgment, filed March 11, 2021, is denied. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action with respect to petitioner's unpaid tax liabilities for 2008 and 2012 as described in the Notice of Determination Concerning Collection Action(s) Under Sections 6320 and 6330, dated August 19, 2020, upon which this case is based.

(Signed)

Tamara W. Ashford, Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 21-2299

James D. Sullivan,
Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent – Appellee

Appeal from the United States Tax Court. (Tax Ct. No. 11738-20L)

Submitted: April 26, 2022 [sic]
Decided: April 28, 2022

Before AGEE and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge

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Affirmed by unpublished per curiam opinion.

James D. Sullivan, Appellant Pro Se. Lauren E. Hume, Jacob Earl Christensen, Regina Moriarity, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM.

James D. Sullivan appeals from the tax court's order granting summary judgment in favor of the Commissioner and allowing the proposed levy action to proceed. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons state by the tax court. *Sullivan v Comm'r of Internal Revenue,* Tax Ct. No. 11738-20L (U.S. tax Ct. Aug. 4, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED