No. 24-1317

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

Brian D. Swanson

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Tax Code authorize the employer to determine the employee's income tax liability without consent and may the Commissioner of Internal Revenue compel the employee to swear under penalty of perjury that the employer's determination is correct?

2. May the Commissioner of Internal Revenue tax payments as income?

3. Did Puerto Rico become an Incorporated Territory on July 3, 1952 when Congress approved its constitution?

LIST OF PARTIES

All the parties appear in the caption of the case on the cover page.

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B. Procedural History

Mr. Swanson filed a petition for redetermination of deficiency with the Tax Court on May 8, 2022. In his petition he challenged Puerto Rico's status as an unincorporated Territory and the computation of his alleged deficiency using income reported by his employer.

For these arguments, petitioner was sanctioned $25,000 by the Tax Court which affirmed the deficiency on November 12, 2024.

Mr. Swanson filed a timely Notice of Appeal with The Eleventh Circuit Court of Appeals on February 7, 2025. The Commissioner filed a motion for summary affirmance on April 11, 2024 and the Eleventh Circuit granted summary affirmance on May 6, 2025 ruling that Mr. Swanson's arguments are frivolous.

REASONS FOR GRANTING THE PETITION

I. The Commissioner's Error Permits the Employer to Determine the Employee's Income Tax Liability Without Consent and Compels the Employee to Swear Under Penalty of Perjury that the Employer's Determination is Correct.

The Commissioner of Internal Revenue relies upon payments reported by the employer to compute Mr. Swanson's income tax deficiency in the amount of $16,690. An income tax deficiency must be determined using income defined in Subtitle A, not using payments defined in Subtitle C. The

Commissioner errs by using the wrong subtitle to compute income tax.

The Subtitle A income tax and the Subtitle C employment tax are two different taxes, found in two different subtitles, imposed on two different taxpayers and are collected by two different sets of rules. In Subtitle A, Mr. Swanson is the taxpayer who pays a tax based on the receipt of income, but in Subtitle C, McDuffie County Board of Education is the taxpayer that pays a tax based on payments. The Commissioner of Internal Revenue and the lower courts have refused to acknowledge this distinction and have confused the two different taxes. Using payments reported by the employer to compute income tax violates the Tax Code. When Mr. Swanson raises this objection in the courts, his argument is dismissed as, "his salary did not constitute income," and it is declared to be frivolous, including as a bonus, the imposition of sanctions. (App at 2)

The employer is legally liable for the chapter 24 employment tax in accordance with I.R.C. § 3403, which reads:

> The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

The employer is liable to the Commissioner for the payment and accuracy of the chapter 24 employment tax and is not liable to any other person, including the employee.

The chapter 24 employment tax is based on payments that qualify for the tax in accordance with I.R.C. § 3402(a)(1), which reads:

> Except as otherwise provided in this section, **every employer making payment of wages** shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary.
>
> **(emphases added)**

Subtitle C defines payments that are subject to employment tax and employers pay a tax based on payments, not on receipts. The employer is required to make the computations to determine how much payment qualifies for the tax. The employee is legally cut out of this process and plays no part in it. The employee is not liable for a tax on payments and has no knowledge of the Secretary's requirements. The employee has no access to the employer's payment systems and cannot possibly know if the employer followed all the rules prescribed by the Secretary for paying the employment tax on payments. A payment does not qualify as income because a payment is money flowing out, not money flowing in. Subtitle C defines payments, not income. There is no income in Subtitle C. Employment taxes are based on payments not on income.

Thus, when the employer submits a Form W-2 to the Commissioner, the employer certifies that it paid the required taxes based on the payments that are shown on the form. The Form W-2 shows payments, not income. The W-2 shows how much payment is subject to the Subtitle C employment taxes, but it does not show how much income is subject to the Subtitle A income tax. The payments shown on a W-2 are not relevant to the Subtitle A income tax in accordance with I.R.C. §7491(a) because payments are not used to

compute income tax. The Commissioner is misusing the information reported by the employer to convert a Subtitle C tax into a Subtitle A tax; to convert an employment tax into an income tax; to convert a tax on the employer into a tax on the employee; and to convert a tax on payments into a tax on receipts. The Form W-2 is evidence of the employer's employment tax liability, but it is not evidence of the employee's income tax liability.

The use of payments reported by the employer to compute income tax violates the Tax Code. The 2018 Form 1040 Instruction Booklet tells taxpayers to report box 1 from their Form W-2s on line 1 of the Form 1040. This instruction reads:

> Enter the total of your wages, salaries, tips, etc. If a joint return, also include your spouse's income. For most people, the amount to enter on this line should be shown in box 1 of their Form(s) W-2. [1]

This instruction violates the Tax Code. The reporting requirement for box 1 of Form W-2 is found in I.R.C. §6051(a)(3), which is "wages" as defined in I.R.C. §3401(a) from Subtitle C. §3401(a) is a sum of payments, not a sum of income because §3401(a) is money flowing out, not money flowing in.

The first violation of the Tax Code is that I.R.C. §61(a) forbids payments from Subtitle C to determine the meaning of gross income. This statute reads:

> Except as otherwise provided in this subtitle, gross income means

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[1] 2018 Form 1040 Instructions p.26, https://www.irs.gov/pub/irs-prior/i1040gi--2018.pdf

The meaning of gross income is defined exclusively in Subtitle A. Any Income found in subtitles B, C, D, etc., is excluded by law from gross income. This legal restriction prohibits any statute from outside of Subtitle A, including box 1 of a Form W-2 defined by §3401(a) and found in Subtitle C, from determining the meaning of gross income. The meaning of gross income cannot be determined by payments. Box 1 of a Form W-2 is excluded by law from gross income in accordance with the regulation 26 C.F.R. §1.61-1.

The second violation of the Tax Code is that the "wages" defined by I.R.C. §3401(a) are legally restricted to chapter 24. This statue reads:

> For purposes of this chapter, the term "wages" means

There are 100 chapters in the Tax Code, but these "wages" are legally limited to chapter 24 and may not be used in chapter 1 to compute income tax because these "wages" are determined using the rules for payments, not income. §3401(a) "wages" are determined by the employer using the computational procedures provided by the Secretary to determine a qualifying payment. Payments determined in Subtitle C stay in Subtitle C because the rules for taxing payments cannot be substituted for taxing receipts.

The final violation of the Tax Code is found in Subchapter B where we are told that the "Computation of Taxable Income" is limited to statues §§61-291. Clearly, §3401(a) is outside of this range and cannot be used to compute taxable income because §3401(a) is found in a different subtitle and is used to compute a different tax. Reporting §3401(a) on line 1 of the 1040 computes taxable income using

Subtitle C exclusions and pre-tax deductions, which are meant for payments, instead of using the Subtitle A exclusions and pre-tax deductions, which are meant for income. Subtitle A is the income tax subtitle and all the instructions for computing a tax on income are found in Subtitle A, while all the instructions for computing a tax on payments are found in Subtitle C.

The use of payments reported by the employer not only violates the Tax Code, but it also compels the employee to swear under penalty of perjury that the employer's computations are is true and correct for purposes of income tax. The Form 1040 requires the taxpayer to sign the return under penalty of perjury. The jurat reads:

> Under penalty of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.

The Commissioner requires taxpayers to report §3401(a) "wages" on line 1 of the Form 1040. §3401(a) "wages" are determined exclusively by the employer for payments that are subject to employment tax. The employee does not make payments. The employee does not compute employment taxes and is not liable for employment taxes. Mr. Swanson does not have any personal knowledge regarding his employer's computation and payment of the chapter 24 employment tax and he cannot swear under penalty of perjury that his employer computed its liability correctly. More importantly, Mr. Swanson cannot swear under penalty of perjury that his employer's employment tax computations are valid for income tax purposes.

Using payments reported by the employer to compute income tax gives the employer the power to determine the employee's income tax liability without consent. If Mr. Swanson requests a CPA or a tax lawyer to complete his taxes, then his consent is required and paperwork must be signed. The basic elements of a contract must be present to hire a tax preparer including: offer, acceptance, consideration and legality. None of these requirements are present if the Commissioner compels Mr. Swanson to use payments from box 1 of a Form W-2 as the basis of his income tax liability. Mr. Swanson did not hire or contract with his employer to compute his income tax liability and the Tax Code does not authorize his employer to compute income tax, including the dollar figure that must be reported on line 1 of the Form 1040. There is no statute in the Tax Code that permits the employer to determine the employee's income tax liability without consent.

The Tax Code imposes these legal restrictions to separate the two taxes and to prevent one taxpayer from determining another taxpayer's liability. In Subtitle A, Mr. Swanson is the taxpayer, but in Subtitle C, McDuffie County Board of Education is the taxpayer. These taxes are mutually exclusive and must be computed independently of each other because the taxpayer who is liable for income tax is not the same taxpayer who is liable for employment tax. And, a tax based on income is not the same as a tax based on payments. The Commissioner is the author of much confusion because he uses administrative procedures to combine and confuse these two taxes when the Tax Code uses the statutes to keep them separate from each other.

Because the Commissioner computes taxable income using payments instead of income, nearly

every collection act of the Commissioner has been wrong: Every penalty, every sanction, every deficiency, every seizure of property, every prosecution and every imprisonment have been wrong, including the Notice of Deficiency issued to Mr. Swanson in the amount of $16,690 and the §6673 sanction in the amount of $25,000.

The Tax Code does not use payments reported by the employer to compute income tax. The use of box 1 of a Form W-2 to compute taxable income finds no support in the Tax Code and is not authorized by any statue. This error gives the employer the power to determine Mr. Swanson's income tax liability without consent and to compel Mr. Swanson to falsely swear under penalty of perjury that his employer's determination based on payments is correct. The use of payments reported by the employer is an illegal administrative procedure invented by the Commissioner, which invalidates both the Notice of Deficiency in the amount of $16,690 and the I.R.C. §6673 sanction in the amount of $25,000.

II. It is Blatantly Absurd that the Income Tax May Be Collected in the 50 States and in Every Foreign Country in the World, But Not in Puerto Rico.

Puerto Rico was acquired by the United States after the Spanish-American War in 1898. The Insular Cases determined that Puerto Rico was an "unincorporated" Territory and was not fully subject to the Constitution, especially in terms of taxation and revenue collection. According to *Downes v Bidwell*, cessation by treaty does not make conquered territory domestic territory in the sense of the revenue laws.

Circumstances have changed since 1901. The people of Puerto Rico acquired U.S. Citizenship in 1917[2] and Congress officially approved Puerto Rico's constitution on July 3, 1952.[3] While *Balzac v. Porto Rico* tells us that, "in these latter days, incorporation is not to be assumed without express declaration or an implication so strong as to exclude any other view," petitioner believes that *Balzac's* conditions have been satisfied. Congressional approval of Puerto Rico's constitution represents either an express declaration or an implication too strong to ignore. On July 3, 1952, Puerto Rico's treaty relationship with the United States ended and its constitutional relationship began. With an approved constitution, Puerto Rico became part of our constitutional system and is now domestic territory in the sense of the revenue laws. Puerto Rico became fully subject to the Uniformity Clause when collecting the federal income tax on July 3, 1952.

Failure to recognize this change has spawned a costly injustice. First, American citizen may flee to Puerto Rico to evade their responsibility to pay income tax and second, American citizen who live in the 50 states are forced to pay a tax from which American citizens in Puerto Rico are exempt.

No court has ruled whether Congress' approval of Puerto Rico's constitution is sufficient to incorporate the Territory or whether this change affects the uniform collection of the federal income tax. Mr. Swanson has been sanctioned three time for simply asking the question. *See SCOTUS 23-361, 24-659.* This issue should be decided because it is blatantly absurd that the income tax can be collected in the 50

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[2] Public Law 64-368, 39 Stat. 951; Section 5

[3] Public Law 82-447, 66 Stat. 327

States and in every foreign country in the world, but not in Puerto Rico.

The Commissioner's Notice of Deficiency is invalid because these notices are not issued uniformly to public schoolteachers in Georgia and in Puerto Rico.

CONCLUSION

The Court should grant the petition.

Respectfully Submitted,

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May 27, 2025