

APPENDIX

[DO NOT PUBLISH]

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

**No. 16-15851
Non-Argument Calendar**

Agency No. 030014-15 L

CHRISTOPHER CHAPMAN,
Petitioner-Appellant,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

**No. 16-15852
Non-Argument Calendar**

Agency No. 030031-15 L

PAMELA J. CHAPMAN,
Petitioner-Appellant,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeals for Review of a Decision of the
U.S. Tax Court

(October 27, 2017)

OPINION

Before HULL, JULIE CARNES and FAY, Circuit Judges.

PER CURIAM:

Christopher and Pamela J. Chapman (collectively, “the Chapmans”), proceeding pro se, appeal the Tax Court’s grants of summary judgment in favor of the Commissioner of Internal Revenue on their petitions for review of determinations from the Internal Revenue Service (“IRS”) Office of Appeals. We affirm.

I. BACKGROUND

The IRS issued the Chapmans, husband and wife taxpayers, notices of intent to levy and notices of federal tax lien for the years 1999 to 2004. The notices informed the Chapmans of their right to collection-due-process (“CDP”) hearings regarding the proposed collection actions. The Chapmans submitted CDP-hearing requests, arguing that the notices of intent to levy were based on computer calculations that the Government Accountability Office (“GAO”) repeatedly had determined to be unreliable. The IRS Office of Appeals rejected the Chapmans’ requests, because they had raised arguments deemed to be frivolous.

The Chapmans filed petitions with the Tax Court

to dispute the Office of Appeals' determinations. They argued that the letters denying their requests for hearings were insufficient because they had failed to explain why the IRS believed their arguments were frivolous. The Commissioner moved for summary judgment against the Chapmans, contending that the Chapmans' arguments sought only to delay or impede the administration of their taxes and were therefore barred. The Commissioner argued there were no genuine issues of material fact because the Chapmans' general attacks on the reliability of the IRS's system of calculating tax liability, rather than specific allegations of error in their tax assessments, were not reviewable.

In response, the Chapmans argued that the IRS's letter denying their CDP-hearing requests failed to explain why their arguments were frivolous. They argued that the Office of Appeals officers assigned to their cases had not asserted that the IRS's computer calculations were accurate and that the IRS had failed to provide any documentation supporting the accuracy of its computer programs generally or of the calculations made in their cases. They also reiterated their assertion that the GAO repeatedly had questioned the reliability of the IRS's records.

The Tax Court granted the Commissioner's motions for summary judgment, noting that the Chapmans had not challenged any specific aspect of their tax assessments. The court also noted that the Chapmans had only challenged the amount or existence of their tax liabilities but that such challenges were not proper in their administrative or tax-court proceedings. The Tax Court denied the Chapmans' motions for reconsideration.

On appeal, the Chapmans raise four arguments, all of which they concede were not raised before the Tax Court or the Office of Appeals. First, the Chapmans argue that their notices of deficiency were invalid because federal-income taxes are only applied to U.S. citizens by regulation, rather than an act of Congress, in violation of the Sixteenth Amendment. Second, they argue that the IRS violated 26 U.S.C. § 83(a) by taxing them on their wages without allowing them to adjust their gross income by deducting the fair-market value of their labor.

Third, they argue that 26 U.S.C. § 1, which imposes the federal-income tax, is void for vagueness because the tax code is unclear and misleading as to individuals' tax liabilities. Finally, they argue that their notices of deficiency were invalid because the IRS could sanction them for failing to pay the deficiencies by revoking their passports without allowing them to challenge provisions of the tax code without being financially sanctioned.

II. DISCUSSION

We review de novo the Tax Court's grant of summary judgment. *Roberts v. Comm'r*, 329 F.3d 1224, 1227 (11th Cir. 2003). Issues not raised before the Tax Court are not properly before us on appeal. *Stubbs v. Comm'r*, 797 F.2d 936, 938 (11th Cir. 1986). However, we may consider an issue not raised in a lower court if: (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party had no opportunity to raise the issue previously; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the

issue presents significant questions of general impact or of great public concern. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1332 (11th Cir. 2004).

The Chapmans concede that “[t]his appeal does not concern the issues presented in Tax Court, but rather raises only new issues.” Appellants’ Br. 2. Before the Tax Court, the Chapmans had argued that their notices of deficiency were unenforceable because the IRS’s calculations were unreliable.¹

Here, however, the Chapmans raise four arguments that were not raised before the Tax Court or the Office of Appeals. Additionally, the Chapmans have not shown why it would be a miscarriage of justice to decline to address their claims or why they could not have raised these arguments before the Tax Court and appealed any resulting sanctions order along with the merits of their claims.² See *Access Now, Inc.*, 385 F.3d at 1332. We therefore decline to address their arguments for the first time on appeal. See *Stubbs*, 797 F.2d at 938. Accordingly, the Chapmans have not properly raised any argument that the Tax Court’s grants of summary judgment in favor of the Commissioner were erroneous.

AFFIRMED.

¹ By failing to raise this argument on appeal, the Chapmans have abandoned it. See *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (“[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned.”).

² The IRS may impose penalties on any person who submits an argument that previously has been deemed frivolous or reflects a desire to delay or impede tax collection. 26 U.S.C. § 6702(b). We review the Tax Court’s imposition of sanctions for an abuse of discretion. See *Roberts*, 329 F.3d at 1229.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHRISTOPHER CHAPMAN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 30014-15 L

ORDER AND DECISION

Nothing in petitioner's response, filed April 25, 2016, to respondent's motion for summary judgment, filed April 12, 2016, specifically challenges the accuracy of any of the attachments to the motion showing the relevant assessment documents or assessment history of the underlying liabilities petitioner has placed in dispute in this section 6330(d)¹ proceeding. Instead, petitioner's submissions do nothing more than point out that the accuracy of respondent's records has been questioned in government publications. Petitioner does not deny receipt of the relevant notices of deficiency referenced in respondent's motion or otherwise challenge a specific entry on any of the attachments to that motion.

Petitioner did not in his request for an administrative hearing, and does not in the petition that commenced this proceeding, request a collection alternative to the collection action initiated by

¹ Section references are to the Internal Revenue Code of 1986, as amended.

respondent in order to collect the underlying liabilities; he challenges only the existence or the amounts of those liabilities. This he is not entitled to do in this proceeding, and would not have been entitled to do at an administrative hearing. See section 6330(c)(2)(B). Under the circumstances, respondent's failure or refusal to conduct an administrative hearing in response to petitioner's request for one is of no consequence.

In all other respects, respondent's motion shows that the settlement officer proceeded as required under sections 6320 and 6330, and petitioner does not suggest otherwise.

For the foregoing reasons, as well as for the reasons set forth in respondent's motion, it is

ORDERED that respondent's motion is granted.

It is further

ORDERED AND DECIDED that respondent's determination to proceed with the collection actions here in dispute is sustained.

(Signed) **Lewis R. Carluzzo**
Special Trial Judge

ENTERED: JUN 07 2016

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHRISTOPHER CHAPMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 30014-15 L

ORDER

The positions and arguments advanced in petitioner's motion to reconsider, filed June 24, 2016, have been taken into account in the Order and Decision entered on June 7, 2016. That being so, it is ORDERED that petitioner's motion to reconsider that Order and Decision is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

DATED: Washington, D.C. June 29, 2016

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PAMELA J. CHAPMAN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 30031-15 L

ORDER AND DECISION

Nothing in petitioner's response, filed April 26, 2016, to respondent's motion for summary judgment, filed April 12, 2016, specifically challenges the accuracy of any of the attachments to the motion showing the relevant assessment documents or assessment history of the underlying liabilities petitioner has placed in dispute in this section 6330(d)¹ proceeding. Instead, petitioner's submissions do nothing more than point out that the accuracy of respondent's records has been questioned in government publications. Petitioner does not deny receipt of the relevant notice of deficiency or otherwise challenge a specific entry on any of the attachments to respondent's motion.

Petitioner did not in her request for an administrative hearing, and does not in the petition that commenced this proceeding, request a collection alternative to the collection actions initiated by

¹Section references are to the Internal Revenue Code of 1986, as amended.

respondent in order to collect the underlying liabilities; she challenges only the existence or the amounts of those liabilities. This she is not entitled to do in this proceeding, and would not have been entitled to do at an administrative hearing. See section 6330(c)(2)(B). Under the circumstances, respondent's failure or refusal to conduct an administrative hearing in response to petitioner's request for one is of no consequence.

In all other respects, respondent's motion shows that the settlement officer proceeded as required under sections 6320 and 6330, and petitioner does not suggest otherwise.

For the foregoing reasons, as well as for the reasons set forth in respondent's motion, it is

ORDERED that respondent's motion is granted. It is further

ORDERED AND DECIDED that respondent's determination to proceed with the collection actions here in dispute is sustained.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: MAY 27 2016

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PAMELA J. CHAPMAN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 30031-15 L

ORDER

Contrary to a representation contained in petitioner's motion to reconsider, filed June 24, 2016, a copy of the notice of deficiency issued to petitioner for 1999, 2000 and 2001 is part of respondent's motion for summary judgment. Otherwise, the positions and arguments advanced in petitioner's motion have been taken into account in the Order and Decision entered on May 27, 2016. That being so, it is

ORDERED that petitioner's motion to reconsider that Order and Decision is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

DATED: Washington, D.C.
June 28, 2016

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

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

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

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

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

26 U.S.C. § 61 provides:

Gross Income Defined. (a) **General Definition.**- Except as otherwise provided in this subtitle, gross

income means all income from whatever source derived, including (but not limited to) the following items;

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property; ...

26 U.S.C. § 61(b) provides:

Cross references. For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

26 U.S.C. § 83 provides:

Property Transferred in Connection with the Performance of Services. (a) If, in connection with the performance of services, property is transferred. ..., the excess of -

- (1) the fair market value of such property... over,
 - (2) the amount (if any) paid for such property,
- shall be included in the gross income of the person who performed such services...

26 U.S.C. § 212 provides:

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

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

26 U.S.C. § 1001(a) provides:

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

26 U.S.C. § 1011(a) provides:

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

26 U.S.C. § 1012 provides:

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

26 U.S.C. § 6001 provides:

Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall

be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

26 U.S.C. § 6673 provides:

Sanctions and costs awarded by courts.

(a) Tax court proceedings.

(1) Procedures instituted primarily for delay, etc.

Whenever it appears to the Tax Court that -

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies, the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of \$25,000.

26 U.S.C. § 6702 provides:

Frivolous tax submissions.

(a) Civil penalty for frivolous tax returns.

A person shall pay a penalty of \$5,000 if -

(1) such person files what purports to be a return of a tax imposed by this title but which -

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self-assessment is substantially incorrect, and

(2) the conduct referred to in paragraph (1) -
(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) Civil penalty for specified frivolous submissions.

(1) Imposition of penalty. Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

(2) Specified frivolous submission. For purposes of this section -

(A) Specified frivolous submission. The term "specified frivolous submission" means a specified submission if any portion of such submission -

(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(ii) reflects a desire to delay or impede the administration of Federal tax laws.

26 U.S.C. § 7214 provides:

Offenses by officers and employees of the United States.

(a) Unlawful acts of revenue officers or agents. Any officer or employee of the United States acting in connection with any revenue law of the United States

(1) who is guilty of any extortion or willful oppression under color of law; or

(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

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

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

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

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

(7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

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

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

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment

against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

26 U.S.C. § 7345 (a)(3) provides:

Revocation or denial of passport in case of certain tax delinquencies.

(a) In general. If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt, the Secretary shall transmit such certification to the Secretary of State for action with respect to denial, revocation, or limitation of a passport pursuant to section 32101 of the FAST Act.

(b) Seriously delinquent tax debt.

(1) In general. For purposes of this section, the term "seriously delinquent tax debt" means an unpaid, legally enforceable Federal tax liability of an individual -

(A) which has been assessed,

(B) which is greater than \$50,000, and

(C) with respect to which -

(i) a notice of lien has been filed pursuant to section 6323 and the administrative rights under section 6320 with respect to such filing have been exhausted or have lapsed, or

(ii) a levy is made pursuant to section 6331.

(2) Exceptions. Such term shall not include -

(A) a debt that is being paid in a timely manner pursuant to an agreement to which the individual is party under section 6159 or 7122, and

(B) a debt with respect to which collection is suspended with respect to the individual -

(i) because a due process hearing under section 6330 is requested or pending, or

(ii) because an election under subsection (b) or (c) of section 6015 is made or relief under subsection (f) of such section is requested.

26 U.S.C. § 7803 provides:

[Commissioner of Internal Revenue; other officials.]

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

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

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

Amount paid. For the purposes of section 83 and the regulations thereunder, the term "amount paid" refers to the value of any money or property paid for

the transfer of property to which § 83 applies.

26 C.F.R. 1.83-4(b)(2) provides:

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

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

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

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

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

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

Computation of gain or loss.

(a) *General rule.* Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed

by section 1001(a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (i.e., the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain.