

No.

IN THE
Supreme Court of the United States

KAREN FUJITA,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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March 26, 2018.

QUESTIONS PRESENTED

First impression: 26 U.S.C. § 83 explains how to tax all employee and non-employee compensation in America.¹ This Court has never decided a case involving this provision as applied to typical fees, wages, salaries, commissions, or self-employment earnings. Petitioner would have been penalized in Tax Court for seeking an explanation of this provision with respect to her liability, and thus first raised this provision before the Ninth Circuit, and now before this Court.

1. Are the interests of justice best served by this Court's taking up of the core issues rejected below, as a *Hormel* exception to procedural bars or prudential rules? (See *Hormel v. Helvering*, 312 U.S. 552 (1941)).

2. Did the lower court err in declining to hear the 26 U.S.C. § 83 issues — thus effectively holding that Tax Court's imposition of severe monetary penalties for making arguments deemed “frivolous,” without prior notice or otherwise, is not a miscarriage of justice, fundamental error, or an abuse of discretion? (See *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-36 (1992)).

3. Are monetary sanctions under 26 U.S.C. § 6673 unconstitutional as imposed on purely legal arguments to Tax Court, and on Petitioner's rights to free speech, to redress, and to due process under the First and Fifth Amendments?²

¹ See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 (5th Cir. 1992); *Gudmundsson v. U.S.*, 634 F.3d 212 (2d Cir. 2011).

² *i.e.*, Does Petitioner have a constitutional right to be right or wrong about a provision of law found in 26 U.S.C. and its regulations?

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PETITION FOR A WRIT OF CERTIORARI

Karen Fujita respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit court is unreported and appears in the Appendix at page A6. It is unofficially reported at 699 Fed. Appx. 725.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on October 26, 2017. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AMENDMENT, STATUTES, AND REGULATIONS INVOLVED (CITATIONS)

Provisions of the United States Constitution involved include Amendment I and Amendment V.

Provisions of the U.S. Code, Title 26 involved include 26 U.S.C. § 61, § 83, § 212, § 1001(a), § 1011(a), § 1012, § 6001, § 6673, § 6702, § 7214, § 7345 (a)(3), and § 7803.

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

INTRODUCTION

Petitioner Karen Fujita (“Fujita”) petitioned the Tax Court to contest a notice of determination related to IRS income tax liens for 2003 and 2009. She raised the issue of the statutory language of 26 U.S.C. § 83 in a notice and offer of proof to the Tax Court on September 19, 2016. In that pretrial filing, she stated:

The Respondent instructs that Petitioner’s personal services are a cost, and has done so for more than twenty years and in no uncertain terms. Consider these instructions found in IRS Publication 17 Tax Guide For Individuals ... which is in alignment with Petitioner’s interpretation of 26 USC §§ 83(a) and 1012, and relevant implementing regulations 26 CFR 1.83-3(g) (amount paid is “any money or property”), 1.83-4(b)(2) (apply § 1012 to calculate cost), and 1.1012(a) (cost is “cash or other property”).

The Tax Court remained silent regarding these questions in its decision, and ruled against her on other grounds. Thus, Fujita again sought a “clear explanation” of the law with regard to 26 USC §§ 83(a) and 1012 before the Ninth Circuit. The Appeals

¹ The pertinent text of these provisions is set forth verbatim in the Appendix, beginning at A11.

Court offered no explanations, but affirmed the Tax Court decision, stating: "We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009)."

This petition not only presents questions of the most basic sort, but also represents Petitioner's very last shot at due process in a void where controlling provisions are strictly off limits, administratively, in Tax Court and on appeal; no exegesis. The court below declined to hear Petitioner's issues, despite clear indication that the issues raised are of public importance and concern statutory construction, and to avoid them is to do injustice. It is well-settled in the Ninth Circuit that where an issue not raised below "is a purely legal one, the injection of which would not have caused the parties to develop new or different facts, it is proper to resolve it on appeal," and when the question is one of statutory construction and important to the public, the court may exercise discretion to decide it. *Commodity Futures Trading Com'n v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982). Further, particular circumstances may prompt a reviewing court, where injustice might otherwise result or where public policy requires, to consider questions neither pressed nor passed upon below. *Nuelsen v. Sorensen*, 293 F.2d 454, 462 (9th Cir. 1961).

One statute "explains how" to tax every cent of compensation paid for personal services in the entire country: 26 U.S.C. § 83(a).² The IRS does not train its

² See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (5th Cir. 1992) ("Section 83(a) explains how property received in exchange for services is taxed."); *Gudmundsson v. U.S.*, 634 F.3d 212 (2d Cir. 2011) ("At the heart of this case is

staff on the language or operation of § 83 and related statutes (26 U.S.C. §§ 212, 1001, 1011, 1012), and will send anyone who inquires into or argues § 83 to Tax Court.³

To prevent from having to interpret and apply governing provisions, including § 83, Tax Court imposes severe monetary sanctions for “frivolous arguments” under 26 U.S.C. § 6673, and does so without the slightest exegesis of the statutes or implementing regulations.

The exegesis of governing provisions is merely due course,⁴ but Petitioner and all taxpayers are barred from any exegesis by Tax Court under threat of monetary sanctions. For example, Chris Bernsdorff was penalized \$1,000.00 for asking Tax Court to indulge issues concerning applicable statutory provisions, *e.g.*, 26 U.S.C. § 83 and others.

I.R.C. § 83, which governs the taxation of property transferred in connection with the performance of services.”); and IRS’ Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, Revenue Ruling 2007-19 (“Section 83 provides for the determination of the amount to be included in gross income and the timing of the inclusion when property is transferred to an employee or independent contractor in connection with the performance of services.”).

³ Please note *any and all emphasis* employed in this petition has been added.

⁴ See *Barnhart v. Sigmon Coal Company*, 534 U.S. 438, 450, (2002) (“As in all statutory construction cases, we begin with the language of the statute. The first step ‘is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.’ *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989)). The inquiry ceases ‘if the statutory language is unambiguous and ‘the statutory scheme is coherent and consistent.’” 519 U.S., at 340.”).

Bernsdorff v. Commissioner, 68 T.C.M. 1515 (1994). Susan Eccles was penalized \$3,000.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 U.S.C. § 83 and others. *Eccles v. Commissioner*, 69 T.C.M. 1994 (1995). Robert and Mauris Justice were penalized \$3,750.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 U.S.C. § 83 and others. *Justice v. Commissioner*, 70 T.C.M. 46 (1995).

William Santangelo was penalized \$2,500.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 U.S.C. § 83 and others. *Santangelo v. Commissioner*, 70 T.C.M. 878 (1995). Stephen Talmage was penalized \$6,500.00 for offering to concede all facts in exchange for "how to comply with § 83." *Talmage v. Commissioner*, 71 T.C.M. 2370, 2372, 2375 (1996).⁵

Disagreement among the circuits

In 1995, the Fourth Circuit allowed eight new issues on appeal, viewing Tax Court's penalties related to § 83 challenges and other statutory challenges as a miscarriage of justice (See *McCall v. CIR*, 73 F.3d 358 (4th Cir. 1996) (no exegesis whatsoever, see #95-2459, April 8, 1996 Order denying rehearing)).

Petitioner Fujita rightfully views Tax Court's sanction policy on legal questions as a deterrent and

⁵ In an unpublished opinion by the Ninth Circuit, docket number 95-70866, Santangelo was further penalized \$2,000.00. In 1995, tax court docket 1610-95, Richard and Pamela Bryan were threatened with penalties for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 U.S.C. § 83 and others. In an unpublished opinion by the Ninth Circuit, docket number 95-70800, Bryan was penalized \$2,000.00.

thus raised statutory issues with great trepidation and was not surprised when the Tax Court did not address the questions raised in any way. The Ninth Circuit held that Petitioner's failure to raise legal issues in Tax Court, particularly concerning the proper explication of 26 U.S.C. § 83, barred review on appeal.

The lower courts clearly feel that Tax Court penalties must be endured as the price of admission to appeals, and then without a guarantee that the penalties will be viewed as an abuse of discretion and invalidated. The Circuits treat litigants with statutory challenges and reliance differently; those challenging the IRS receiving the harshest treatment.

Petitioner also stated a challenge that a certain regulation deviates from statute, and that 26 U.S.C. § 7345 is unconstitutional when passport privileges are suspended over a tax debt while the law is kept off limits, violating procedural due process rights: "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937). However, discussion of the statute that governs the taxation of any and all compensation paid for personal services, and of its implementing regulations, is strictly prohibited. For every American, every dollar they earn, and wherever they reside, the importance of § 83, *a fortiori*, §§ 1001 and 1012, cannot be overstated.

STATEMENT OF THE CASE

Respondent has sought to collect alleged amounts owed for several tax years over and over again. Petitioner, upon being diagnosed with cancer, sought with an attorney's help to settle all years so she could hopefully get well and proceed with life. Respondent, however, has continued to evade Petitioner's questions and has even misquoted amounts allegedly owed and returned with subsequent collection actions, including those for 2003 and 2009. These years were already paid in full at the end of 2015. Respondent has done nothing to inform her how her interpretation of the law is mistaken or invalid. Only silence abounds where statutory proof of a liability belongs.

Factual background and proceedings below

In Tax Court, Fujita argued that the veracity of the IRS' records was dubious beyond prudent reliance, and only raised the issues for appeal by entering them in the record due to Tax Court's policy of penalizing anyone who contradicts the IRS. This pattern of abuse on Tax Court's part dissuaded Petitioner from seeking relief in previous instances. Tax Court's judgment against Fujita was filed on October 7, 2016.

The Ninth Circuit affirmed on October 26, 2017, effectively holding that failure to raise issues in Tax Court, and failure to prove a miscarriage of justice, barred Petitioner from review of new issues on appeal. That court ruled Petitioner's questions were "meritless" and she should act to get penalized in Tax Court anyway, and appeal the sanctions as the only way to get review.

But those cases do not announce an inflexible practice, as indeed they could not without doing violence to the statutes which give to Circuit Courts of Appeals reviewing decisions of the Board of Tax Appeals the power to modify, reverse, or remand decisions not in accordance with law "as justice may require." There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below. See *Blair v. Oesterlein Machine Co.*, 275 U.S. 220, 225 (1927).

Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice. And examination of the cases relied upon by petitioner discloses that this Court, in following in some cases the general principle sought to be invoked here by petitioner, has been careful to point out the circumstances justifying application of the practice in the particular case.

Hormel v. Helvering, 312 U.S. 552, 556-57 (1941).

Petitioner Fujita's interpretation of the law, which Respondent cannot refute, shows her to have no duty under 26 U.S.C. § 6001 to keep records at all, while Respondent probes back decades with allegations of fortunes made by Petitioner. Her appeal was the only available avenue to avoid the obvious catastrophe that awaits her otherwise, and new issues should be allowed because of Tax Court's record of abuse, and in the interest of justice.

The Ninth Circuit's Decision

(a) The lower court effectively held, in error, that Tax Court's policy of penalizing anyone who asks it to interpret controlling provisions is a valid exercise of discretion, and that it's not a miscarriage of justice. This practice or policy violates the First and Fifth Amendments. Petitioner should have received review in the court below.

Respondent promises, presumably as a measure of due process, that Petitioner shall have access to the law:

The Right to Be Informed.- Taxpayers have the right to know what they need to do to comply with the tax laws. *They are entitled to clear explanations of the laws* and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

<https://www.irs.gov/Taxpayer-Bill-of-Rights>⁶

To date, Respondent has refused or otherwise failed (since at least 1993) to *put his finger on the law*⁷ or to disclose the *basis in law and fact*⁸ upon which it seeks to sustain Petitioner's respective deficiencies. That year is the earliest discoverable year where Respondent received queries regarding § 83's operation in relation to the common forms of compensation for services. Its relevance is unquestionable, but government at every level refuses to approach, much less dissect and explain, the language of its provisions, even in Tax Court:

Respondent contends that the words "any person" in section 83(a) encompass independent contractors as well as employees. We agree with Respondent. ... We reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, the language of the section covers the transfer of any property transferred in connection with the performance of services "to any person other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that Congress was aware that the statute's coverage extended

⁶ URL as visited on Dec. 26, 2017.

⁷ See *United Dominion Industries, Inc. v. United States*, 532 U.S. 822, 838-39 (2001) (citing *Leavell v. Blades*, 237 Mo. 695, 700-701, 141 S.W. 893, 894 (1911)).

⁸ See *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937), "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies."

beyond restricted stock plans for employees. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. *The regulations state that section 83 applies to employees and independent contractors* (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances, *these regulations are not "unreasonably and plainly inconsistent with the revenue statutes."* Consequently, they are sustained. [cites omitted]
Cohn v. Commissioner, 73 T.C. 443, 446 (1979).

Section 83 applies to all compensation paid for services of corporations, and for the services of individuals.⁹ Labor is property.¹⁰ The fair market value ("FMV") of property is established through the terms of an "arm's length transaction."¹¹

§ 83 "Property Transferred in Connection with the Performance of Services.

⁹ See *Gudmundsson v. U.S.*, 634 F.3d 212 (2d Cir. 2011); *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (5th Cir. 1992); *MacNaughton v. C.I.R.*, 888 F.2d 418 (6th Cir. 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (5th Cir. 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (9th Cir. 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 at [1] (S.D. Miss. 1991); *Robinson v. Commissioner*, 82 T.C. 444 (1984); *Cohn v. Commissioner*, 73 T.C. 443, 446 (1979).

¹⁰ See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Cases*, 83 U.S. 36, 127 (1872); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's*, 6th Ed., "property."

¹¹ See *U.S. v. Cartwright*, 411 U.S. 546, 552 (1973); *Black's* 6th Ed., "Arm's length transaction."

(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[.]”*

We shall begin our analysis with an exegesis of the general provisions of section 83. We then shall examine those provisions in conjunction with the facts of the instant case so that we may decide whether respondent adequately notified petitioner of the issue of the applicability of section 83. Section 83(a) generally provides that where property is transferred in connection with the performance of past, present, or future services, the excess of the fair market value of the property over the amount paid for the property is includable as compensation in the gross income of the taxpayer who performed the services. *Bagley v. Commissioner*, 85 T.C. 663, 669 (1985), *affd. per curiam* 806 F.2d 169 (8th Cir. 1986). Section 83 does not apply only to employees of the transferor of the property; rather, it is applicable to any person other than the one for whom the services were performed, including independent contractors of the transferor. *Cohn v. Commissioner*, 73 T.C. 443, 446 (1979). *Pagel, Inc. v. Commissioner*, 91 T.C. 200, 204-205 (1988).

At no time is an American afforded such an opportunity to view or observe the Respondent's dissection and interpretation, its *exegesis*, of § 83 and its implementing regulations, as they relate to common forms of compensation, *i.e.*, wages, fees, commissions, tips, salaries, self-employment compensation. This is the equation all parties agree applies to calculate Petitioner's costs:

26 C.F.R. 1.83-3(g): "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): "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): ". . . The cost is the amount paid for such property in **cash or other property.**"

26 C.F.R. 1.1011-1: "Adjusted basis.- The adjusted basis... is the cost or other basis prescribed in **section 1012[.]**"

26 C.F.R. 1.1001-1: "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.*

The law thus makes clear that any property is a cost, and it is not Petitioner's fault that this clearly established law applies to her. Nor is it her fault that Respondent has chosen to let these provisions remain untouched since 1993, when this connection was first made in IRS administrative interactions. Only when these provisions have properly operated is one allowed to say "gross income," and then only in relation to an *excess over the amount (if any) paid* for the compensation, lest an IRS agent or two get fired. (See 26 U.S.C. § 7214).

“Any” is all-inclusive, according to the Respondent’s five victories in this Court. See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008). Petitioner insist upon this definition in this case and in all dealings with the Respondent.

If “any” is all-inclusive, personal services are plainly a cost under the law; an “amount paid.” Instead of rewriting key regulations, Respondent has chosen to leave them as they are, and has gone on to echo precisely that conclusion in its “Tax Guide for Individuals” for each of the past twenty-three years. Claim this is correct and you’ll be penalized:

1993 and 1994 Editions pg. 117: “Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount of cash and debt obligations you pay for it and ***the fair market value of other property or services you provide in the transaction.*** Your cost also includes amounts you pay for . . . [.]”

1995 Edition pg. 115: “Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount of cash and debt obligations or in ***other property.*** Your cost also includes amounts you pay for . . . [.]”

1996 Edition pg. 114, 1997 Edition pg. 99: “Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount of cash and debt obligations or in ***other***

property. Your cost also includes, for example, amounts you pay for . . . [.]"

1998 and 1999 Editions pg. 95: "Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount you pay in cash, debt obligations, or ***other property***. Your cost also includes, for example, amounts you pay for the following items . . . [.]"

2000 Edition pg. 94 "Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount you pay in cash, debt obligations, or ***other property***. Your cost also includes amounts you pay for the following items[.]"

2001 Edition pg. 97 "Cost Basis.- The basis of property you buy is usually its cost. ***The cost is*** the amount you pay in cash, debt obligations, ***other property, or services***. Your cost also includes amounts you pay for the following items[.]"¹²

But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.

See *Hutto v. Davis*, 454 U.S. 370, 375 (1982). (See also *Hart v. Massanari*, 266 F.3d 1155, *passim* (9th Cir. 2001)).

¹² The identical 2001 Edition phrase is found in IRS Publication 17 Tax Guide for Individuals, 2002 through 2016.

This is the motive for the penalties in Tax Court, and for the silence at the IRS and on appeal, because Petitioner's costs are "the value of any money or property paid" and are "cash or other property," by law, and all Respondent has to re-classify the value of personal services as a profit or as gross income is its arbitrary preference or *policy* that labor is property within which one has no basis and is therefore to be excluded from cost. (See *Talmage, infra*).

As a matter of first impression this Court has before it the (non)treatment of the statutory section that actually governs cost and profit for every American who sells personal services. When Respondent's victories relating to the term "any" are applied as a canon to the statutory and regulatory language defining Petitioner's costs, however, every such argument is deemed "frivolous."

This re-classification by mere whim of the Respondent of *some* property is impermissible according to precedent, unless the courts are willing to allow the IRS to pick and choose exceptions from thin air and to use them to ambush those gullible enough to believe what the law tells them. The average individual stands no chance unless he hands over all control of *taxation* to Respondent's executive actors.

To sanction to any degree generally a litigant who makes a statutory or constitutional argument, or specifically as would have occurred in this case, is a bar to free speech and access to the law in violation of the First and Fifth Amendments, and the concomitant monetary sanctions are a wrongful taking in violation of the Fifth Amendment. This begs the question, to preserve the statute and

admonish the policy, or hold the statutes allowing such sanctions to be unconstitutional? (See 26 U.S.C. §§ 6702 and 6673).

Petitioner charges that forcing her to choose between making a legal challenge in court and being sanctioned, and not making a legal challenge to avoid sanctions, renders 26 U.S.C. § 6673 unconstitutional under the First and Fifth Amendments.

(b) The lower courts held in error that rights to an exegesis of governing provisions are barred by failing to raise such issues in Tax Court. Whenever the law is concealed, due process requires invalidation of Respondent's assessments. The lower court should have heard Petitioner's issues on the merits.

Petitioner might be adjudged as owing an income tax, but her interpretation of the written law remains without refutation by Respondent's finest legal minds since 1993.

A tax must be imposed by clear and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar Refining v. McClain*, 192 U.S. 397, 416 (1904); *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Smietanka v. First Trust & Savings Bank*, 257 U.S. 602, 606 (1922); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929); *Crooks v. Harrelson*, 282 U.S. 55 (1930); *Burnet v. Niagra Falls Brewing Co.*, 282 U.S. 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932); *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Hassett v. Welch*, 303 U.S. 303, 314 (1938); *U.S. v. Batchelder*, 442 U.S. 114, 123 (1978)).

Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed. *United States v. Harris*, 347 U.S. 612, 617 (1954).

U.S. v. National Dairy Corp., 372 U.S. 29, 32 (1963). See also *Browning-Ferris Industries of Vermont v. Kelso Disposal, Inc.*, 492 U.S. 257, 300-301 (1989); *U.S. v. Classic*, 313 U.S. 299, 331 (1941).

Albert Einstein said: "The hardest thing in the world to understand is the income tax." <http://www.irs.gov/uac/Tax-Quotes>.¹³

Petitioner Fujita now faces Respondent over the same legal issues she presented in Tax Court and on appeal, and still the favor of silence surrounds the Respondent where this Court says due process and a full explanation belongs. Petitioner's been to the highest court in the land and the law is still a secret, grand jury and all.

I agree with the Court that the Internal Revenue Code provision and the corresponding Treasury Regulations that control consolidated filings are best interpreted as requiring a single-entity approach in calculating product liability loss. I write separately, however, because I respectfully disagree with the dissent's suggestion that, when a provision of the Code and the corresponding regulations are

¹³ URL as visited Dec. 26, 2017.

ambiguous, this Court should defer to the Government's interpretation. See post this page (opinion of Stevens, J.). *At a bare minimum, in cases such as this one, in which the complex statutory and regulatory scheme lends itself to any number of interpretations, we should be inclined to rely on the traditional canon that construes revenue-raising laws against their drafter.* See *Leavell v. Blades*, 237 Mo. 695, 700-701, 141 S.W. 893, 894 (1911) ("When the tax gatherer puts his finger on the citizen, he must also put his finger on the law permitting it"); *United States v. Merriam*, 263 U.S. 179, 188 (1923) ("If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer"); *Bowers v. New York & Albany Lighterage Co.*, 273 U.S. 346, 350 (1927) ("The provision is part of a taxing statute; and such laws are to be interpreted liberally in favor of the taxpayers"). Accord, *American Net & Twine Co. v. Worthington*, 141 U.S. 468, 474 (1891); *Benziger v. United States*, 192 U.S. 38, 55 (1904). *United Dominion Industries, Inc. v. United States*, 532 U.S. 822, 838-39 (2001) (Justice Thomas, concurring).

To punish a person for doing what the law plainly permits is a due process violation of the most basic sort." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); see also *U.S. v. Goodwin*, 457 U.S. 368, 372 (1982). The law clearly permits "any money or property" as a cost, but penalties reign. The law permits the Petitioner to raise statutory issues in

Tax Court, to probe the IRS for clear explanations,¹⁴ and they are clearly permitted, if not required, to rely on the language of the law and decisions of this Court that tell them how to interpret it. Respondent is not above bringing criminal charges under this cloud, despite its inability to even prove the law has operated, and despite Petitioner's obvious good-faith understanding (*i.e.*, innocence).

"I will concede all facts of the case today if they'd just tell me how to comply with § 83." That statement earned Steven Talmage a \$6,500.00 penalty, while Tax Court recited an unwritten standard,¹⁵ one diametrically opposed to statute

¹⁴ See 26 U.S.C. § 7803.

¹⁵ See *Talmage v. Commissioner*, 71 T.C.M. 2370, 2373 (1996) "Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence of better argument) to justify summary judgment for the respondent. [internal cites omitted]. Even if wages are, in effect, an exchange of value for equal value, they are nevertheless taxable income. [internal cites omitted]. And even if we apply section 1001, his basis is determined under sections 1011 and 1012 as his cost, not fair market value. ***Since he paid nothing for his labor, his cost and thus his basis are zero.*** [internal cite omitted] Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, *i.e.*, his wages. Petitioner's primary argument is that section 83, Property Transferred in Connection with the Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, thereby exempting them from tax. *Section 83 provides that*

and regulation, to justify that penalty; the Fourth Circuit affirmed based on Tax Court's reasoning:

Stephen V. Talmage appeals from the tax court's orders (1) entered March 11, 1996, granting summary judgment to the Commissioner and imposing a penalty under 26 U.S.C. § 6673(a)(1)(B) (1994) for pursuing a frivolous action in tax court; and, (2) entered April 17, 1996, denying his motion for reconsideration. ***We affirm, based on the reasoning of the tax court.***

See *Talmage v. CIR*, 101 F.3d 695 (4th Cir. 1996) (unpublished).

The following provisions of law comprise the foundation of the arguments Petitioner posed below, which shows Petitioner to be a whistleblower, if anything:

26 U.S.C. §§ 1, 61, 83(a), 212, 879(a)(2), 1001, 1011, 1012, 1402(b), 3121(e), 3306(j), 6201, 6671(b), 7343, 7345, 7621, 7651(4)(A), and 7655;

26 C.F.R. 1.1-1, 1.83-3(e), (f), (g), 1.83-4(b)(2), 1.1001-1(a), 1.1011-1(a), 1.1012-1(a),

property received for services is taxable to the recipient of the property to the extent of its fair market value minus the amount (if any) paid for the property. In attempting to equate his wages with property for which he has a tax cost, petitioner's argument is nothing more than a variation of the wages-are-not-income claim frequently advanced by tax protesters, and it is completely without merit. [internal cites omitted] Petitioner's argument fails for the same reason that other protester's arguments fail; the worker's cost for his services—and thus his basis—is zero, not their fair market value."

1.1401-1(a), 1.1402(a)-2(a), 1.1402(b)-1(d),
31.0-2(a)(1), 31.3121(e)-1(b), 301.6201-1(a),
and 602.101;

42 U.S.C. § 411(b)(2);

Social Security Act of 1935 § 211, P.L. 74-271, 49 Stat. 620 (August 14, 1935), now codified as 42 U.S.C. ch. 7;

1939 Internal Revenue Code §§ 111, 112, 113, 3640, and 3811.

There is Petitioner's entire "playbook," fully disclosed in open court in early 1994 — and it still gives the Respondent fits.

"[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." *Helvering v. Tex-Penn Oil Co.*, *supra*. This notion has proven meaningless in the twenty-five years Respondent has been confronted over the statutory provisions above, which wouldn't be the first occasion on which the ranks required a field dressing. See *U.S. v. Lanier*, 520 U.S. 259 (1997). Spare a litigant the monetary sanctions and simply provide an *exegesis moment* and let them appeal. Just the running dispute concerning § 83 suffices to expose unacceptable modes of enforcement and abuses of discretion, so other briefed claims from below will not be explored herein.

Petitioner charges that no tax assessment under 26 U.S.C. is valid when the operation of the statute that governs how to tax her is a secret held under threat of enormous monetary sanctions or otherwise. Petitioner also charges that her rights to due process are violated when she is barred, through prudential rule or statute, any access to the law by limiting review of governing statutory issues in any court,

that due process prohibits the placing on hold of proof the government is not breaking the law in order to obtain property from them, be it Federal Reserve Notes or a passport privilege per 26 U.S.C. § 7345.

REASONS FOR GRANTING THE WRIT

If this Court finds a *Hormel* exception in this instance and decides to take on the issues rejected by the lower court, amendment of this Petition would be in order.

When a simple question about the controlling provisions — “How did § 83(a) operate in your conclusion that I owe an income tax?” — evokes enormous monetary sanctions, “broken” doesn’t suffice to describe the process. The reasons to grant the writ could start and stop there, but the ramifications on the daily life an American is forced to endure are horrendous, when not totally destructive of employment, a marriage, a mortgage, an estate.

The law is off limits. No witness to this sees a shred of integrity or due process in the courts. Petitioner did it the hard way, using just the law to form her understanding, and she now stands to lose her entire future to a government that tacitly admits to racketeering, as would stand any similarly situated Americans. Kristine York, Sandra Cote, Dick Simkanin and others; these Americans are dead from stress over tax controversies. Petitioner, herself, has suffered from non-Hodgkin’s lymphoma from an immune system highly compromised by chronic stress over two decades of IRS driven persecution. Petitioner refuses to use the term “tax,” and she

freely and with confidence charges from the rooftops that this is a constitutional crisis from which 330 million-plus Americans rightfully and unjustly cower in their daily lives. Real people die.

Further, no authorities agree on what "frivolous" is; the Circuits have viewed new issues on appeal differently. Petitioner's claims are not on the IRS' frivolous arguments list, yet will still evoke monetary sanctions in Tax Court.

At no time prior to Tax Court is any taxpayer notified that Petitioner's specific claims are "frivolous" arguments warranting monetary penalties. The American public has no access to several very particular provisions of law, and will be penalized for seeking it, administratively, in Tax Court, on appeal, and in civil and criminal tax cases. The law is officially off limits as a matter of policy, and penalizing as frivolous statutory arguments concerning controlling provisions bars access to the law, causing Americans to avoid contact with government at all costs, and to doubt that the law protects them. This suspicion can only foster dissent.

Another case out of Tax Court, now beginning appeal on the Seventh Circuit, *Orth v. C.I.R.*, #18049-16 (U.S.TC Indianapolis, IN, final Order filed October 12, 2017), saw that petitioner articulate the same claims but reserve them for appeal, so he lacks the defects the lower courts claim exist in this case. In the interest of judicial economy, this Court might wish to offer instruction.

Today, the least of claims has risen to bother the highest Court in the land. While insignificant, just a fortune to Petitioner so as to destroy her and her family, the consequences are ubiquitous. Millions of Americans are faced with a behemoth Title 26 and its

regulations, and many are punished for violating an unwritten rule.

CONCLUSION

When Congress legislates for a "fair tax system" (26 U.S.C. § 7803), Petitioner charges that it does not contemplate that monetary penalties for statutory arguments the Respondent finds inconvenient should escape the purview of "fair." This Court has held that the exercise of a right cannot be penalized, licensed, conditioned. When mere statutory arguments that leave Tax Court unable to provide an exegesis are penalized as "frivolous," it serves to put Tax Court and the IRS in charge of taxation. When Tax Court could merely cite the past decision that says a certain challenge is frivolous, why a penalty at all?

The costs to which petitioner refers are those associated with the public's reaction to the speech. Listeners' reaction to speech is not a content-neutral basis for regulation. See *id.*, at 321 (opinion of O'CONNOR, J.); *id.*, at 334 (opinion of Brennan, J.); *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 55-56 (1988); *Murdock v. Pennsylvania*, 319 U.S. 105, 116 (1943); cf. *Schneider v. State* (Town of Irvington), 308 U.S. 147, 162 (1939) (fact that city is financially burdened when listeners throw leaflets on the street does not justify restriction on distribution of leaflets). Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob. (fn12). See *Gooding v. Wilson*, 405 U.S. 518

(1972); *Terminiello v. Chicago*, 337 U.S. 1 (1949).

This Court has held time and again: "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Regan v. Time, Inc.*, 468 U.S. 641, 648-649 (1984); *Simon & Schuster, Inc. v. Member of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991); *Arkansas Writers' Project*, 481 U.S., at 230. The county offers only one justification for this ordinance: raising revenue for police services. While this undoubtedly is an important government responsibility, it does not justify a content-based permit fee. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-36 (1992).

...The logical force requiring rejection of their arguments-apart from their assertions of personal political philosophy which do not provide a basis for us, a Court sitting to interpret the law, to decide the questions dispositive of this case...

Rowlee v. Commissioner, 80 T.C. 1111, 1120 (1983), quoting *Reading v. C.I.R.*, 70 T.C. 730 (1978), *aff'd*, 614 F.2d 159 (8th Cir. 1980).

Compare:

... the pleadings do not raise a genuine issue of material fact respecting Respondent's determinations ... but rather involve only issues of law. [Cite omitted] Therefore

Respondent's motion for judgment on the pleadings will be granted. ... The final matter we consider is [penalties].
Abrams v. Commissioner, 82 T.C. 403, 408 (1984).

Thus, in one year Tax Court sits to interpret the law (*Rowlee*), and the next year it penalizes a petitioner for asking it to do so (*Abrams*). This is not dereliction or incompetence. Who's to say otherwise when the Respondent is silent in its own defense, letting crippling monetary sanctions do its talking for it instead of hewing to law as it must. (See Const., 16th Amend.; *Monsanto*, *supra* at 609) ("The statutory provision at issue here is broad and unambiguous, and Congress' failure to supplement 853(a)'s comprehensive phrase — "any property" — with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language.").

Petitioner submits her situation distinctly qualifies for *Hormel* consideration, and the lower court erred in its assessment of what justice does and does not require. The refusal to provide an exegesis deprives all litigants of appellate level review of the issue(s), creating rather a *procedural* controversy, blocking access to the law to that degree.

What serves the interests of justice? Yards of precedent on lenity and taxation by clear language must be abandoned for Respondent to receive favor against the Petitioner. It's just the law, and the innocent should be permitted to relax. If the law clubs Petitioner, by all means, club them to death if the law permits. But if the law or Constitution protects Petitioner from being so clubbed, just what

is a judiciary or executive that looks away? (See Declaration of Independence 1776; *Evans v. Gore*, 253 U.S. 245 (1920); *Hormel, supra.*).

The petition for writ of certiorari ought to be granted.

Respectfully submitted,

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