IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-60167

Adolfo Sandor Montero,
Petitioner—Appellant
v.
Commissioner of Internal Revenue
Respondent—Appellee

Appeal from the Tax Court
Internal Revenue Service
Agency No. 10107-24L

Before King, Haynes, and Ho, Circuit Judges.
PER CURIAM:[1]

Pro se Petitioner Aldofo Sandor Montero appeals the Tax Court's decision upholding the Internal Revenue Service ("IRS") Independent Office of Appeals' imposition of a frivolous-filing penalty for the taxable year 2020. He also appeals that court's imposition of a $25,000 sanction for advancing a frivolous position. We AFFIRM.

"Adolfo Montero is no stranger to making frivolous arguments to avoid paying income tax." Montero v. Comm'r of Internal Revenue, No. 24-60190, 2024 WL 4491604, *1 (5th Cir. Oct. 15, 2024) (per curiam). On several occasions, we have encountered—and rejected—his assertion that his

[1] This opinion is not designated for publication. See 5th Cir. R. 47.5.

salary from Dell is not taxable income. See Montero v. Comm'r of Internal Revenue, No. 24-60302, 2024 WL 5105532, at *1 (5th Cir. Dec. 9, 2024) (per curiam); Montero, 2024 WL 4491604, at *1; Montero v. Comm'r of Internal Revenue, 354 F. App'x 173, 175 (5th Cir. 2009) (per curiam). We reject them again. See Parker v. Comm'r of Internal Revenue,724 F.2d 469, 471–72 (5th Cir. 1984) ("[I]t seems incredible that we would again be required to hold that the Constitution, as amended, empowers the Congress to levy an income tax against any source of income . . . .").

For similar reasons, the tax court did not abuse its discretion in issuing a sanction. "Montero has been repeatedly warned—in the proceeding below as well as numerous prior proceedings—of the risk of advancing frivolous arguments, yet he continues to advance those arguments." Montero, 2024 WL 4491604, at *1. "Given Montero's extensive history advancing groundless arguments, imposing the maximum sanction of $25,000 was not an abuse of discretion." Id.; see also Montero, 354 F. App'x at 176 (finding no abuse of discretion for sanctions against Montero).

The judgment of the Tax Court is thus AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-60167
Summary Calendar

Adolfo Sandor Montero,
Petitioner—Appellant
v.
Commissioner of Internal Revenue
Respondent—Appellee

Appeal from the Tax Court,
Internal Revenue Service
Agency No. 10107-24L

JUDGMENT

Before King, Haynes, and Ho, *Circuit Judges.*

This cause was considered on the record of the United States Tax Court and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the United States Tax Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellee the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-60167

Adolfo Sandor Montero,
Petitioner—Appellant

v.

Commissioner of Internal Revenue
Respondent—Appellee

Appeal from a Decision of the
United States Tax Court
Tax Court No. 10107-24L

ORDER:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing and rehearing en banc out of time is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to recall the mandate is DENIED.

<Signature Image>
Carolyn Dineen King
United States Circuit Judge

Docket:10107-24L Document:36 Filed: 11/25/25

United States Tax Court
Washington, DC 20217
Docket No. 10587-22

Adolfo Sandor Montero,
Petitioner
v.
Commissioner of Internal Revenue
Respondent

ORDER AND DECISION

This collection due process (CDP) case is currently calendared for trial during the Court's December 8, 2025, San Antonio, Texas, trial session. Petitioner, Adolfo Sandor Montero, seeks review of a Notice of Determination in which the Internal Revenue Service (IRS) Independent Office of Appeals (IRS Appeals) sustained a proposed levy to collect a frivolous filing penalty for the taxable year 2020. Now before the Court are Mr. Montero's Motion for Summary Judgment (Doc. 21) and the Commissioner's Motion for Summary Judgment and Imposition of Penalty (Doc. 25). We will deny Mr. Montero's Motion, grant the Commissioner's Motion, and impose a section 6673(a) penalty[1].

Background

I. Mr. Montero's 2020 CDP Case

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times. Monetary amounts are shown in U.S. dollars and generally are rounded to the nearest dollar.

During the taxable year 2020, Mr. Montero was employed by Dell. Despite earning a salary for his work with Dell, Mr. Montero asserted on his Form 1040, U.S. Individual Income Tax Return, that he had no wage or salary income. He concluded that he was due a refund of $15,434.

Alongside his Form 1040, Mr. Montero filed a Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., on which he reported that he received "[w]ages, tips, and other compensation" of $0 during the taxable year 2020.

The Commissioner examined Mr. Montero's return and determined that it was frivolous. On July 3, 2023, the Commissioner assessed a $5,000 penalty under section 6702(a) for filing a frivolous tax return and issued to Mr. Montero an IRS Notice CP15, Notice of Penalty Charge.

The Commissioner issued to Mr. Montero a Notice of Intent to Levy on October 23, 2023, informing Mr. Montero that the Internal Revenue Service proposed to levy his assets to collect the $5,000 and detailing his right to a CDP hearing. Mr. Montero timely requested a CDP hearing. At the conclusion of Mr. Montero's hearing, on May 14, 2024, the Commissioner issued to Mr. Montero a Notice of Determination sustaining the proposed levy action.

Mr. Montero then, while living in Texas, petitioned this Court for review. On October 9, 2025, Mr. Montero filed a Motion for Summary Judgment (Doc. 21). The Commissioner filed a competing Motion for Summary Judgment and Imposition of Penalty (Doc. 25) on October 17, 2025, and responded to Mr. Montero's Motion on November 10, 2025 (Doc.

28). Mr. Montero responded to the Commissioner's Motion on November 17, 2025 (Doc. 29).

Before turning to the parties' Motions, we will briefly review Mr. Montero's long history of appearances before this Court, as we also do in an Order and Decision filed today in Docket no. 7697-20 and in Docket no. 9936-24L.

II. Mr. Montero's Other Cases

"Adolfo Montero is no stranger to making frivolous arguments to avoid paying income tax." Montero v. Commissioner, No. 24-60190, 2024 WL 4491604, at *1 (5th Cir. Oct. 14, 2024), aff'g Order and Decision, No. 22454-21 (T.C. Nov. 2, 2023), cert. denied, 145 S. Ct. 1964 (2025). This is not Mr. Montero's first trip to the Tax Court: He is a frequent litigant concerning his income taxes.

Mr. Montero first petitioned this Court to challenge a collection action regarding his taxable years 2003 and 2004, making many of the same arguments that he presses today. See Transcript of Bench Opinion, Montero v. Commissioner, No. 23166-07L (Oct. 15, 2008). We sustained the Commissioner's determination and imposed a $20,000 penalty against Mr. Montero under section 6673. Id. The Court of Appeals for the Fifth Circuit affirmed. Montero v. Commissioner, 354 F. App'x 173, 175–76 (5th Cir. 2009).

Mr. Montero later filed a complaint in the United States District Court for the Western District of Texas, seeking a refund of his federal income tax, Social Security and Medicare taxes for the taxable year 2005. See Montero v. United States, No. 1:08-CV-885-JRN, 2010 WL 11541616, at *1–2 (W.D. Tex. Mar. 25, 2010), aff'd, 409 F. App'x 738 (5th Cir.

2011), cert. denied, 565 U.S. 979 (2011). The District Court dismissed Mr. Montero's complaint for lack of jurisdiction. Id. at *4. On appeal, the Fifth Circuit again affirmed. Montero, 409 F. App'x at 738. And, in 2011, the Supreme Court denied Mr. Montero's petition for writ of certiorari. Montero v. United States, 565 U.S. at 979.

Mr. Montero returned to the Western District of Texas in 2020, and his case was once more dismissed. Montero v. United States, No. 1:19-CV-1035-RP, 2021 WL 1163662, at *1 (W.D. Tex. Jan. 26, 2021), aff'd, No. 21-50237, 2021 WL 4314057 (5th Cir. July 13, 2021), cert. denied, 142 S. Ct. 1126 (2022). The District Court, on January 26, 2021, refused to reconsider its decision to dismiss Mr. Montero's action. Id. The Fifth Circuit affirmed yet again, 2021 WL 4314057, at *1, and the Supreme Court denied Mr. Montero's petition for writ of certiorari, 142 S. Ct. at 1126.

In 2021, Mr. Montero petitioned this Court concerning his taxable year 2017. See Order and Decision, No. 22454-21, at 1 (T.C. Nov. 2, 2023), aff'd, No. 24-60190, 2024 WL 4491604 (5th Cir. Oct. 15, 2024), cert. denied, 145 S. Ct. 1964 (2025). On November 2, 2023, the Court granted the Commissioner's Motion for Summary Judgment in that case and imposed a $25,000 penalty against Mr. Montero under section 6673. Id. The Fifth Circuit affirmed our decision and the imposition of the penalty, 2024 WL 4491604, at *1–2, and, once again, the Supreme Court denied Mr. Montero's petition for a writ of certiorari, 145 S. Ct. at 1964.

In 2022, Mr. Montero petitioned this Court concerning his taxable year 2018. In a bench opinion, the Court rejected Mr. Montero's contentions and

imposed a penalty of $5,000 under section 6673. Transcript of Bench Opinion, Montero v. Commissioner, No. 10587-22 (Dec. 13, 2023), aff'd, No. 24-60302, 2024 WL 5105532 (5th Cir. Dec. 9, 2024), cert. denied, Order Denying Petitioner for Writ of Certiorari, Montero v. Commissioner, No. 25-42, 2025 WL 2824107 (U.S. Oct. 6, 2025). Once more, the Fifth Circuit affirmed on both counts. The Supreme Court denied Mr. Montero's petition for a writ of certiorari in October 2025.

Discussion

I. Section 6702(a) Penalty

Mr. Montero's principal argument in this case is that his position with respect to his income tax liability was not frivolous and in fact is correct. In his view, the salary he received from Dell was not taxable because he "did not engage in any privileged activity tied to federally connected benefits[,]" Pet'r's Mot., p. 16, and was therefore not liable to pay an excise tax. In relation to that central argument, Mr. Montero sets out many other contentions regarding the constitutional limits of the income tax, the validity of his tax liabilities, and the meanings of certain statutory terms.

Mr. Montero has advanced these arguments in other cases. Lest there be any confusion regarding their merits, the arguments have been roundly rejected and are clearly frivolous.[2] E.g., Montero v.

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[2] We will not waste additional judicial resources by refuting Mr. Montero's arguments in this Order. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We 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.").

Commissioner, 2024 WL 5105532, at *1 n.1 ("Montero has repeatedly made frivolous arguments before this court to evade paying income tax."); Montero v. Commissioner, 2024 WL 4491604, at *1 ("Because [Mr. Montero's] argument is frivolous, we affirm the tax court's grant of summary judgment and imposition of a $25,000 fine."); Montero v. Commissioner, 354 F. App'x at 175 ("Montero's contention that compensation received from a private employer is not subject to income tax has been rejected as frivolous numerous times." (citing Parker v. Commissioner, 724 F.2d 469, 471–72 (5th Cir. 1984))); Walker v. Commissioner, T.C. Memo. 2022-63, at *6; Lovely v. Commissioner, T.C. Memo. 2015-135, at *7. The issue before the Court in this case is not merely whether the arguments themselves are frivolous—they are—but whether Mr. Montero's return for the taxable year 2020 meets the requirements of section 6702(a), and whether the frivolous return penalty was properly approved pursuant to section 6751(b).

A. Standard of Review and Burden of Proof

Section 6330(d)(1) does not prescribe the standard for the Court to apply in reviewing IRS Appeals' administrative determination in a CDP case. The framework for that review is set out in our cases.

When the validity of the underlying tax liability is properly at issue in a CDP proceeding, the Court will generally review the matter de novo. Giamelli v. Commissioner, 129 T.C. 107, 111 (2007); Davis v. Commissioner, 115 T.C. 35, 39 (2000). Where the validity of the underlying tax liability is not properly at issue, the Court will review the IRS's determination for abuse of discretion. Sego v.

Commissioner, 114 T.C. 604, 610 (2000).

A taxpayer may challenge his underlying tax liability at an administrative hearing if he did not receive a notice of deficiency or otherwise have an opportunity to dispute his tax liability. I.R.C. § 6330(c)(2)(B). The Commissioner does not dispute that, because the section 6702(a) penalty in issue is an assessable penalty, petitioner was not given an opportunity to challenge it before assessment. See I.R.C. § 6703(b); Callahan v. Commissioner, 130 T.C. 44, 50 (2008) (explaining statutory deficiency procedures do not apply to section 6702(a) frivolous return penalties).

Generally, the taxpayer has the burden of proof regarding his underlying liability. See Rule 142(a); Thompson v. Commissioner, 140 T.C. 173, 178 (2013). But in any proceeding involving the issue of liability for a section 6702(a) penalty, "the burden of proof with respect to such issue shall be on the Secretary." I.R.C. §§ 6703(a), 7491(c); see Clarkson v. Commissioner, T.C. Memo. 2022-92, at *8; Osband v. Commissioner, T.C. Memo. 2013-188, at *16–17.

The Commissioner also has the burden of production in this case. See Varela v. Commissioner, T.C. Memo. 2024-92, at *4. The burden of production includes showing compliance with the supervisory approval requirement of section 6751(b)(1), which requires that the initial determination to assess certain penalties "is personally approved (in writing) by the immediate supervisor of the individual making such determination." See Kestin v. Commissioner, 153 T.C. 14, 22 (2019).

B. Liability for the Section 6702(a) Penalty

Section 6702(a) imposes a civil penalty of $5,000

for filing "frivolous tax returns." A frivolous return penalty applies when three conditions are met. See Varela, T.C. Memo. 2024-92, at *4. First, the taxpayer must have filed a document that "purports to be a return of a tax imposed by this title." I.R.C. § 6702(a)(1). Second, the purported return must be a document that either "does not contain information on which the substantial correctness of the self-assessment may be judged" or "contains information that on its face indicates that the self-assessment is substantially incorrect." Id. Third, the taxpayer's conduct must either be "based on a position which the Secretary has identified as frivolous" or must "reflect a desire to delay or impede the administration of Federal tax laws." I.R.C. § 6702(a)(2). We take these three requirements in turn.

The first requirement is obviously met. Mr. Montero filed a Form 1040 claiming a substantial refund; the Form 1040 clearly purported to be a federal income tax return.

Mr. Montero's Form 1040 and Form 4852, taken together, meet the second requirement as well. The Form 1040 reflects $15,433.91 of "Federal income tax withheld." And, on the Form 4852, Mr. Montero provided that "excess withholding amounts on the company issued W-2 show accurate overpayments/credits (items 7- h/i)." Mr. Montero also wrote that he did not "consent to a § 3402(p) agreement to DEEM [his] unprivileged remuneration as statutory 'wages.'" It is clear from Mr. Montero's statements that Dell paid Mr. Montero some "remuneration" and that Dell withheld taxes from its payments to Mr. Montero. Nonetheless, Mr. Montero reported an adjusted gross income of $1,201.50,

made up entirely of taxable interest and a government stimulus payment. Such a return contains information that on its face indicates the self-assessment is substantially incorrect. Walker v. Commissioner, T.C. Memo. 2022-63, at *6 ("As a so-called zero return reporting no taxable income and attempting to 'correct' a form W-2 to report no wages, the return contained 'information that on its face indicate[d] that the self-assessment [was] substantially incorrect.'"); Whitaker v. Commissioner, T.C. Memo. 2017-192, at *12–13; see also Davis v. United States, 742 F.2d 171, 172 (5th Cir. 1984) (holding that a return which reported zero wages despite Forms W-2 indicating more than $60,000 in wages was frivolous); Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985) (holding that a return which listed wages as zero despite a W-2 indicating more than $50,000 in wages was frivolous); Lovely v. Commissioner, T.C. Memo. 2015-135, at *3, aff'd, 642 F. App'x 268 (4th Cir. 2016) (per curiam) (sustaining the Commissioner's determination where a taxpayer "acknowledge[d] that he received compensation . . . but contend[ed] it was not taxable income").

Mr. Montero's return meets the third requirement as well: The Secretary has identified his position as frivolous. I.R.S. Notice 2010-33, 2010-17 I.R.B. 609, sets out a list of positions identified as frivolous for the purposes of section 6702(a). Mr. Montero's positions—that his wages are not subject to income tax and that he is exempt from taxation because he is not a federal employee or a recipient of federal benefits—have been so identified. I.R.S. Notice 2010-33, § III(4), 2010-17 I.R.B. at 610 ("Wages, tips, and other compensation received for the performance of

personal services are not taxable income . . . ."); id. § III(7) ("Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006-18, 2006-1 C.B. 743.").

Mr. Montero contends that the IRS failed to adequately identify "a position which the Secretary has identified as frivolous." I.R.C. § 6702(a)(2)(A). He argues that the Form 8278 identified "Argument 44" as the reason for assessment, but that position (44) within Notice 2010-33 is not relevant to his circumstances as it concerns religious organizations. See I.R.S. Notice 2010-33, 2010-17 I.R.B. 609, 612. As we have explained in other cases, however, the reference in Form 8278 to Argument 44

> corresponds to "Argument Codes" (i.e., an enumerated list of frivolous arguments) identified in the Internal Revenue Manual (IRM). See IRM 25.25.10-1(44) (Dec. 15, 2022). This Argument Code, "Zero Wages on a Substitute Form," is a position identified as frivolous by positions (1)(e) and (22) of Notice 2010-33. See Notice 2010-33, 2010-17 I.R.B. at 609, 611.

Varela, T.C. Memo. 2024-92, at *5–6[3]

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[3] The version of the Internal Revenue Manual currently available on the IRS website reflects an alphabetical, rather than numerical, ordering scheme. See IRM 25.25.10-1 (Nov. 25, 2025, 10:30 AM), https://www.irs.gov/irm/part25/item_25-025-010r. The argument is listed there as argument "ar," which is the 44th item on the list. Id. See also IRM 25.25.10.2(5) (Dec. 4, 2021), titled "Identification of Frivolous Submissions," observing that "[f]rivolous returns generally fall under one or more of the five basic categories" and listing under the first category, "Frivolous Income," "ARG 44 - Zero Wages on a

In any event, "[s]ection 6702(a)(2)(A) requires only that the position be identified as frivolous by the Secretary, and there is no requirement that Form 8278 cite the applicable position from Notice 2010-33." Varela, T.C. Memo. 2024-92, at *6 (citing Jaxtheimer v. Commissioner, T.C. Memo. 2019-164, at *15, aff'd, 854 F. App'x 263 (10th Cir. 2021)).

As in Varela, here too all statutory requirements are met, so we find that Mr. Montero's 2020 tax return is frivolous pursuant to section 6702(a).

C. Supervisory Approval of the Section 6702(a) Penalty

A Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, included in the administrative record establishes that supervisory approval for the frivolous return penalty was obtained on June 8, 2023, prior to the assessment of the penalty and communication to Mr. Montero of the determination to assess the penalty. That is, the record reflects that the requirements of section 6751(b) were met with respect to the frivolous return penalty. See Belair Woods v. Commissioner, 154 T.C. 1, 13–14 (2020).

D. Conclusion Regarding the Section 6702(a) Penalty

Because Mr. Montero's return meets the requirements of section 6702(a), and because the frivolous return penalty was timely approved under section 6751(b), we will sustain the Commissioner's determination as reflected in the Notice of Determination. The Commissioner has demonstrated

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Substitute Form."

that there exist no genuine disputes of fact in this case. And the Commissioner, not Mr. Montero, is right on the law. So, we will grant the Commissioner's Motion for Summary Judgment and deny Mr. Montero's.

We have considered all of the parties' arguments and, to the extent not discussed above, conclude they are irrelevant, moot, or without merit.

II. The Commissioner's Request for a Section 6673(a) Penalty

The Commissioner also requests that we impose a penalty of $25,000 under section 6673(a). We will grant the Commissioner's request.

Section 6673(a)(1) authorizes the Court to impose a penalty, not to exceed $25,000, on a taxpayer whenever it appears to the Court that the taxpayer instituted or maintained the proceeding primarily for delay or that the taxpayer's position in the proceeding is frivolous or groundless. See Montero v. Commissioner, 354 F. App'x at 176 ("The Tax Court may sanction a taxpayer whenever it appears that he instituted or maintained a proceeding primarily for delay, or that his position in the proceeding is groundless or frivolous."); Wnuck v. Commissioner, 136 T.C. 498, 513– 514 (2011).

Mr. Montero's arguments are frivolous and sanctionable. See, e.g., Stearman v. Commissioner, 436 F.3d 533, 538 (5th Cir. 2006), aff'g T.C. Memo. 2005-39; Tello v. Commissioner, 410 F.3d 743, 744 (5th Cir. 2005); Sandvall v. Commissioner, 898 F.2d 455, 459 (5th Cir. 1990), aff'g T.C. Memo. 1989-189, and aff'g T.C. Memo. 1989-56. In fact, the Fifth Circuit has affirmed the imposition of section 6673

penalties against Mr. Montero for such arguments three times. See Montero v. Commissioner, 2024 WL 5105532, at *1; Montero v. Commissioner, 2024 WL 4491604, at *1 ("Montero has been repeatedly warned—in the proceeding below, as well as numerous prior proceedings—of the risk of advancing frivolous arguments, yet he continues to advance those arguments. Given Montero's extensive history advancing groundless arguments, imposing the maximum sanction of $25,000 was not an abuse of discretion."); Montero v. Commissioner, 354 F. App'x at 176 ("[T]he Tax Court did not abuse its discretion in issuing sanctions against Montero.").

Despite repeated warnings from this Court and the Fifth Circuit to stop advancing groundless and sanctionable arguments, Mr. Montero presses on undeterred. Accordingly, we will grant the Commissioner's request and impose a penalty of $25,000 pursuant to section 6673(a). See, e.g., Leyshon v. Commissioner, T.C. Memo 2015-104 at *24–29 (setting out factors we consider in deciding whether to impose a penalty), aff'd, 649 F. App'x 299 (4th Cir. 2016).

* * *

Upon due consideration, it is hereby

ORDERED that Mr. Montero's Motion for Summary Judgment (Doc. 21), filed October 9, 2025, is denied. It is further

ORDERED that the Commissioner's Motion for Summary Judgment and Imposition of Penalty (Doc. 25), filed October 17, 2025, is granted. It is further

ORDERED AND DECIDED that the Notice of

Determination Concerning Collection Actions Under IRC Sections 6320 or 6330, dated May 14, 2024, upon which this case is based is sustained.

ORDERED AND DECIDED that there is due from petitioner a penalty under section 6673(a) in the amount of $25,000.00.

(Signed) Emin Toro Judge

United States Tax Court
Washington, DC 20217
Docket No. 10107-24L

Adolfo Sandor Montero,
Petitioner
v.
Commissioner of Internal Revenue
Respondent

Motion to Vacate
Docket No. 10107-24L

It is ORDERED as follows:
This motion is **DENIED**

(signed) Emin Toro
Judge

Served 12/15/25

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-60172

Adolfo Sandor Montero,
Petitioner—Appellant
v.
Commissioner of Internal Revenue
Respondent—Appellee

Appeal from the United States District Court
for the Tax Crt, Internal Revenue Service
USDC No. 7697-20

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before Smith, Higginson, and Wilson, *Circuit Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.

[EXCERPTS — APPENDIX G]

BRIEF FOR THE APPELLANT
United States Court of Appeals for the Fifth Circuit, No. 26-60167 Montero v. Commissioner of Internal Revenue

*[This Appendix reproduces three excerpts from Appellant's Principal Brief as filed in No. 26-60167: (1) the express disavowal of the "wages are not income" position; (2) Argument I, the controlling Supreme Court chain; and (3) Argument II, the Rodriguez de Quijas / Agostini warning and the alternatives put to the panel. Omissions within an excerpt are marked "[* * *]". The brief's tables, statement of the case, remaining arguments, and certificates are not reproduced.]*

EXCERPT 1 — Preliminary Statement, Purpose 3: Scope, Definitions, and Disavowal

Appellant expressly and unequivocally disavows any claim that *"wages are not income."* That argument has never appeared in any of Appellant's filings across any docket, and Appellant has repeatedly said so. Appellant's actual position is precisely this: the IRS failed to establish the constitutionally required privilege nexus for the federal income tax excise to attach to Appellant's Dell payments. That nexus — ***"the privilege of working for or doing business with the United States"*** as identified in ***Howard*** *(Douglas, J., dissenting)* and adopted as Congress's definition of the income tax in Denver, Fn.12 — was never proven. Appellant's 2020 return did not report zero income as a factual fiction. It reflected the constitutional reality that Dell's payments, in the

absence of the required privilege nexus and without a valid contractual deeming agreement, were not taxable statutory wages. The IRS was required to prove that nexus. It did not. Without it, neither the income tax excise nor the §6702 penalty for a *"substantially incorrect"* self-assessment can attach as a matter of constitutional and statutory law.

EXCERPT 2 — Argument I

I. THE CONTROLLING SCOTUS AUTHORITIES BIND THIS COURT

Standard of Review

Tax Court legal conclusions are reviewed de novo. 26 U.S.C. §7482(a)(1). The privilege-nexus question is a federal constitutional question reviewed de novo without deference.

A. The Constitutional Taxonomy Is Binary and Exhaustive

The Constitution's tax framework is binary and admits no third category. ***Brushaber***, quoting *Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 557 (1895)*: *"In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises."* That taxonomy is exhaustive; every federal tax belongs to one class and must comply with that class's rule. *Brushaber, 240 U.S. at 11–12*. Apportionment and uniformity have never been repealed.

B. The Income Tax Is an Excise — The Operative Brushaber Holding

Brushaber answers classification with finality: *"[T]he conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent."* ***Brushaber, 240 U.S.*** at 16–17 *(emphasis added)*. The income tax thus belongs permanently to the class of indirect taxes and must be enforced according to the rules governing excises — including attachment to a privilege.

The Sixteenth Amendment did not alter that character. It conferred *"no new power of taxation,"* ***Stanton***; reading it to create a direct tax exempt from apportionment[1] *"would cause one provision of the Constitution to destroy another,"* ***Brushaber***. What it secured was the income tax's permanent classification as an indirect excise. *Stanton v. Baltic Mining Co., 240 U.S. 103, 112–13 (1916)*. F. Morse **Hubbard**, Treasury's legislative draftsman for the implementing legislation, confirmed the income tax *"is still fundamentally an excise or duty."*

C. Excises Must Attach to a Privilege

Excises, as a class, attach to privileges as their taxable events — that is what makes them excises. Black's Law Dictionary 506 (5th ed. 1979), cited in ***Denver, 573 F. Supp.*** at 691, Fn.11: *"Excise. A tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege."* ***Flint*** confirmed that excises are imposed on *"the privilege*

of doing business in a corporate capacity." When ***Brushaber*** classified the income tax as an excise, it simultaneously confirmed the privilege-nexus requirement carries to that tax. The Sixteenth Amendment cannot have both secured the excise character and eliminated the privilege-nexus requirement excises carry.

D. The Specific Privilege Congress Adopted

Howard, provides the affirmative identification of the specific constitutional privilege to which the income tax excise attaches. Justice Douglas, dissenting, with Justice Black joining: ***"The Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States."*** Id. at 630. That identification of the taxable privilege is the controlling definition of the income tax's taxable event.

Denver, adopted the ***Howard*** dissent as the authoritative statement of what Congress enacted, holding that a local occupational tax fell outside ***"the definition of income tax adopted by the Congress."*** Id. at 691–692. The ***Denver*** court built that conclusion on two deliberate footnotes: Footnote 11 defined *"excise"* from Black's Law Dictionary as a tax on a privilege; Footnote 12 cited ***Howard***, 344 U.S. at 629 *(Douglas, J., dissenting)*, naming the specific privilege as the income tax's constitutional taxable event. Together, those footnotes constitute the most concise authoritative statement of the income tax's constitutional structure in the federal reports. The IRS has never engaged with, distinguished, or rebutted ***Howard*** or ***Denver*** in this or any related proceeding.

E. Moore Reaffirms the Entire Chain

Moore, is the most recent unanimous Supreme Court decision bearing on the constitutional character of the income tax. Every opinion in ***Moore*** — majority, both concurrences, and the dissent — treats income taxes as indirect taxes. The majority stated: ***"income taxes are indirect taxes"*** 144 S. Ct. at 1688, and that the Sixteenth Amendment confirms that taxes on income need not be apportioned. The majority stated further: *"The Sixteenth Amendment expressly confirmed what had been the understanding of the Constitution before Pollock: Taxes on income — including taxes on income from property — are* ***indirect taxes*** *that need not be apportioned."* Id. at 1688. Justice Jackson's concurrence, citing Flint as current 2024 authority, recorded the Government's own acknowledgment that *"the MRT can be understood as an excise tax on the privilege of doing business."* Id. at 1693–1694 *(Jackson, J., concurring).* Not a single Justice in ***Moore*** characterizes the income tax as a *"direct non-apportioned"* tax. The characterization ***Parker*** falsely attributed to ***Brushaber*** in 1984 finds no support in ***Moore***'s unanimous 2024 analysis.

F. The §6702 Penalty Cannot Stand Without the Privilege Nexus

Section 6702(a)(1)(B) penalizes a return reflecting a *"substantially incorrect"* self-assessment. A self-assessment cannot be substantially incorrect if the underlying tax was not owed — and the income tax excise is owed only where the taxpayer exercised the privilege of *"working for or doing business with the United States."* The IRS offered no evidence of that nexus for 2020; Eileen Guo's unrebutted sworn

testimony in Docket No. 10587-22 affirmatively established that Appellant's Dell work was wholly private, unfunded by the federal government, and unconnected to any federal instrumentality. Without the privilege-nexus predicate, the 2020 return is constitutionally accurate, not *"substantially incorrect."* The penalty fails on this ground alone, independent of the Notice 2010-33 statutory predicate addressed in Argument IV.

EXCERPT 3 — Argument II, and the alternatives put to the panel

II. RODRIGUEZ DE QUIJAS AND AGOSTINI MAKE THE COURT BELOW'S FAILURE TO ENGAGE REVERSIBLE PER SE

Standard of Review

De novo. Whether the Tax Court properly followed binding Supreme Court precedent is a pure question of law.

A. The Rodriguez de Quijas Rule

The rule is stated without qualification: *"If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."* ***Rodriguez de Quijas***. The lower court may not circumvent that duty by invoking a conflicting circuit decision or affixing the *"frivolous"* label without substantive engagement.

B. This Court Is the Named Circuit

The Fifth Circuit is the circuit that earned ***Rodriguez de Quijas***'s condemnation by name.

Below was *Rodriguez de Quijas v. Shearson/Lehman Bros., 845 F.2d 1296 (5th Cir. 1988)* — this Court — which had refused to follow ***Wilko v. Swan*** as reduced to *"obsolescence."* The Supreme Court reversed: *"The Court of Appeals refused to follow Wilko, a controlling precedent of this Court. . . . [T]he Court of Appeals therefore engaged in an indefensible brand of judicial activism."* 490 U.S. at 486. The 1988 pattern — treating controlling SCOTUS authority as effectively superseded — is the pattern the Tax Court repeated in Docket No. 10107-24L.

C. The Agostini Extension

Agostini reaffirmed and extended the rule, holding the determination whether a SCOTUS precedent has been overruled belongs exclusively to the Supreme Court. A lower court treating ***Brushaber***, ***Howard***, ***Denver***, or ***Moore*** as displaced — by IRS positions, by the ***Parker*** line, or by time — commits ***Agostini*** and ***Rodriguez de Quijas*** error. Together the two decisions bar evasion of controlling SCOTUS authority.

D. The Documented Failure of the Court Below

The November 25, 2025 ruling cites none of ***Brushaber***, ***Howard***, ***Denver***, or ***Moore***; engages none substantively; distinguishes none on the 2020 facts; and offers no explanation why their privilege-nexus framework does not apply. Nor does it demonstrate overruling — because none has been overruled and ***Moore*** reaffirmed the chain less than eighteen months before the ruling. Each omission is an independent ground for reversal.

E. The "Frivolous" Label Cannot Substitute for

Required Engagement

The ruling invoked ***Crain*** *v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("no somber reasoning needed")* as a bypass mechanism. Crain was designed for genuinely baseless arguments; applying it to ***Brushaber***-grounded claims is exactly what ***Rodriguez de Quijas*** forbids — using a circuit precedent to avoid engaging controlling SCOTUS authority. Under ***Neitzke***, an argument is frivolous only when *"[none] of the legal points [are] arguable on their merits"* at 325. Arguments citing ***Brushaber***, ***Howard***, ***Denver***, ***Flint***, and ***Moore*** are arguable by definition.

[* * * subpart F omitted * * *]

G. The Failure Is Itself the Reversible Error

The chain from ***Brushaber*** through ***Moore*** establishes that the federal income tax is an indirect excise whose privilege nexus — ***"working for or doing business with the United States"*** — ***Denver*** confirmed as *"the definition of income tax adopted by the Congress."* The 2020 ruling neither addressed nor distinguished that chain. Under ***Rodriguez de Quijas*** and ***Agostini***, that is *"an indefensible brand of judicial activism"* this Court has no authority to leave standing.

[The following appears earlier in the brief, in the Preliminary Statement.]

Under ***Rodriguez de Quijas***: a court that ignores directly controlling Supreme Court precedent *"engaged in an indefensible brand of judicial activism."* ***Agostini***: the determination of whether a Supreme Court precedent has been overruled belongs exclusively to the Supreme Court — lower

courts may not treat controlling SCOTUS authority as impliedly displaced by conflicting circuit decisions. The courts below had two permissible options: follow the controlling authority chain, or distinguish it on the facts. They did neither. That failure is itself reversible error, independent of the merits of any individual argument.

[* * *] Step 1 is this brief: the Court must follow ***Moore***, not ***Parker*** *v. C.I.R., 724 F.2d 469* (5th Cir. 1984). As alternative relief, this brief demands that the Court rule for Appellant or certify the constitutional privilege-nexus question to the Supreme Court under 28 U.S.C. §1254(2). This posture places the panel in a clear choice: follow ***Moore***, certify, or openly defy ***Moore*** and create the clearest possible record for Step 2. [* * *]

The obligation of this Court is not damage control or institutional continuity with prior evasions. Every court in this chain bore the same duty: engage ***Brushaber***, ***Howard***, ***Denver***, and ***Moore*** on their merits, or distinguish them on the facts. None did. Under ***Neitzke*** *v. Williams, 490 U.S. 319 (1989)*, arguments whose legal points are *"arguable on their merits"* are not frivolous by definition. Arguments grounded in four unoverruled Supreme Court decisions from 1911 through 2024 are, as a matter of law, arguable on their merits. They cannot be dismissed as frivolous without substantive engagement — and the failure to provide that engagement is the reversible error this Court is asked to correct.

[EXCERPTS — APPENDIX H]

[This Appendix reproduces the cover, the Rule 40 statement, and the argument headings of the Combined Petition for Panel Rehearing and Rehearing En Banc transmitted to the Clerk of the Fifth Circuit on July 26, 2026 in No. 26-60167. The Clerk's Office rejected the transmission and the document was never docketed; no panel has seen it. The body of the petition, its tables of contents and authorities, and its certificates are not reproduced.]

Case No. 26-60167
In The United States Court of Appeals for the Fifth Circuit
Adolfo Sandor Montero, Petitioner - Appellant
v.
Commissioner of Internal Revenue, Respondent – Appellee

On Appeal from a Decision of the United States Tax Court Tax Court / Agency No. 10107-24L

COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Adolfo Montero Pro Se Natural Person
1215 Canyon Maple Road Pflugerville, Texas [78660]
(512) 670-7675 Auslaw07@gmail.com

RULE 40 STATEMENT — CERTIFICATE OF COUNSEL AS TO REHEARING EN BANC

I express a belief, based on a reasoned and studied professional judgment, that the panel's June 10, 2026 decision is contrary to the following decisions of the Supreme Court of the United States, and that

consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions:

- ***Moore** v. United States, 144 S. Ct. 1680 (2024)*;
- ***Brushaber** v. Union Pacific R.R. Co., 240 U.S. 1 (1916)*; and
- The mandatory decisional methodology of ***Rodriguez de Quijas** v. Shearson/American Express, Inc., 490 U.S. 477 (1989)*, and ***Agostini** v. Felton, 521 U.S. 203 (1997)*.

I further express a belief, based on the same judgment, that this appeal involves questions of exceptional importance:

1. Whether a panel of this Court may rest an affirmance solely on ***Parker** v. Commissioner, 724 F.2d 469 (5th Cir. 1984)*, while never citing, distinguishing, or acknowledging the supervening decision of the Supreme Court in ***Moore** v. United States (2024)* on the identical constitutional question — the character of the federal income tax — that the litigant briefed as controlling over ***Parker***; and

2. Whether a federal frivolous-return penalty under 26 U.S.C. §6702 and a maximum $25,000 sanction under 26 U.S.C. §6673 may be affirmed as resting on a *"frivolous"* position with no engagement of the controlling Supreme Court authority the litigant relied upon, and no analysis of the penalty's statutory predicate; and

3. Whether a court may affirm sanctions by replacing Petitioner's actual legal argument — that ***Brushaber*** identifies the income tax as an **excise**, that ***Howard*** / ***Denver*** identify the taxed privilege as ***"working for or doing business with the United States,"*** and that the narrow statutory

definitions of *"wages," "employee,"* and *"employer"* implement that limitation — with the absurd and repeatedly disavowed *"wages are not income"* trope, without matching the actual legal argument to a published §6702(c) frivolous position.

/s/Adolfo S. Montero 7/26/2026

ARGUMENT HEADINGS (from the Table of Contents)

INTRODUCTION AND STATEMENT OF POINTS OVERLOOKED OR MISAPPREHENDED

I. The panel affirmed the §6702 penalty without addressing its statutory predicate failure.

II. The panel itself committed the ***Rodriguez de Quijas*** / ***Agostini*** error it was expressly warned of

III. The affirmative definition the panel refused to confront — ***Howard*** / ***Denver***, which ***Parker*** fabricated the opposite of and ***Moore*** confirms

IV. The panel misapprehended the actual legal argument by replacing it with the disavowed *"wages are not income"* straw man

V. Bootstrapping prior unpublished dispositions and Crain-style nonengagement is not substantive review

VI. The §6673 maximum sanction was affirmed on the improper, foreclosed deterrence basis

CONCLUSION AND PRAYER FOR RELIEF

[EXCERPTS — APPENDIX I]

IRS Transcript:
Request Date: 04-14-2024
Response Date: 04-14-2024
Tracking Number: 105836983286
Wage and Income Transcript
SSN Provided: XXX-XX-XXXX [4 digits redacted]
Tax Period Requested: December, 2020

Form W-2 Wage and Tax Statement
[...]
Submission Type: ..... Original document
[...]
Statutory Employee: ..... Not Statutory Employee
W2 Submission Type: ..... Original
[....]

W-2 2020

Box c: Dell Products LP 1 Dell Way RR1 MS 64 Round Rock TX 78682-7000 Batch #01746
Box e/f: Adolfo S Montero 1215 Canyon Maple Rd Pflugerville TX 78660
Box b: 74-2616803
Box a: <redacted SS number>
Box 1: <redacted for privacy>
Box 2: Empty, no value shown
Box 3: <redacted for privacy>
Box 4: 8537.40
Box 5: <redacted for privacy>
Box 6: <redacted for privacy>
Box 9: Grayed out, empty
Box 10: empty
Box 11: empty
Box 12a: C 954.98

Box 12b: W 1500.00
Box: 12c: DD <redacted>
Box 12d: empty
Box 13: empty <**statutory employee** box, no entry>
Box 14: empty
Box 15: TX
Box 16: empty
Box 17: empty
Box 18: empty
Box 19: empty
Box 20: empty

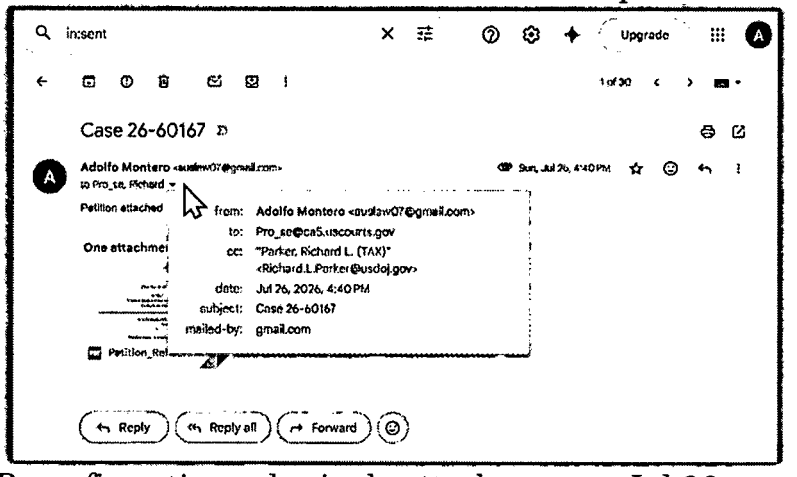
Form 4852 for 2020

Entry 1: Adolfo S Montero
Entry 2: <redacted>
Entry 3: 1215 Canyon Maple road, Pflugerville near [78660] on (actual) texas
Entry 4: 2020, Form W-2 checkbox marked
Entry 5: Dell Products L.P. One Dell Way, Round Rock, TX 78682
Entry 6: 74-2616803
Entries for 7: a) -0- **b)**-0- **c)**-0- **d)**-0- **e)**-0- **f)**-0- **g)**-0- **h)**<redacted> **i)**<redacted>
Entries for 8: <all blank>
Entry for 9: *Company supplied W-2 is in conflict with the "words of art" in the statutory language behind IRC §3401, §3121 & others. I did NOT consent to a §3402(p) agreement to DEEM my unprivileged remuneration as statutory "wages". Remedies will be sought under 26 USC §7422 & §7433 and 5 USC §§701-706 for willful misapplication of IRC §6702 without regard for IRC §6703(a). See attached "2020 Sworn Statement" for details.*

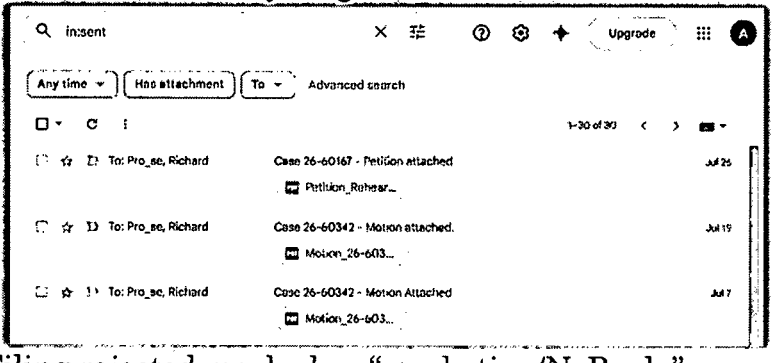
Entry for 10: *Requested* ***corrected W-2c*** *forms as per* ***26 CFR §31.6051-1(b)(1)*** *requirements for information returns when payments are NOT subject to withholding as per my* ***tax exempt*** *status, but they were not provided. The excess withholding amounts on the company issued W-2 show accurate overpayments/credits (items 7-h/i)*

[APPENDIX J]

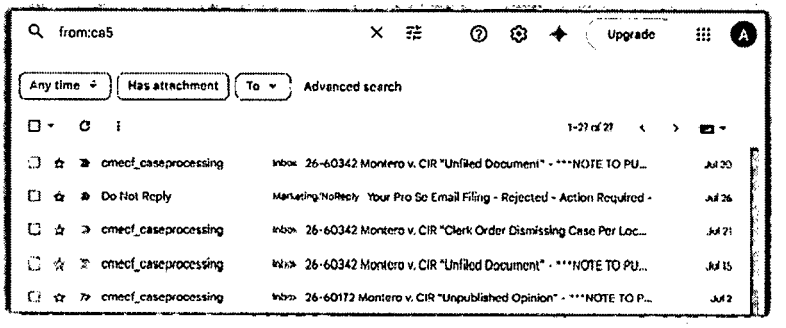
One attachment confirmation & timestamp



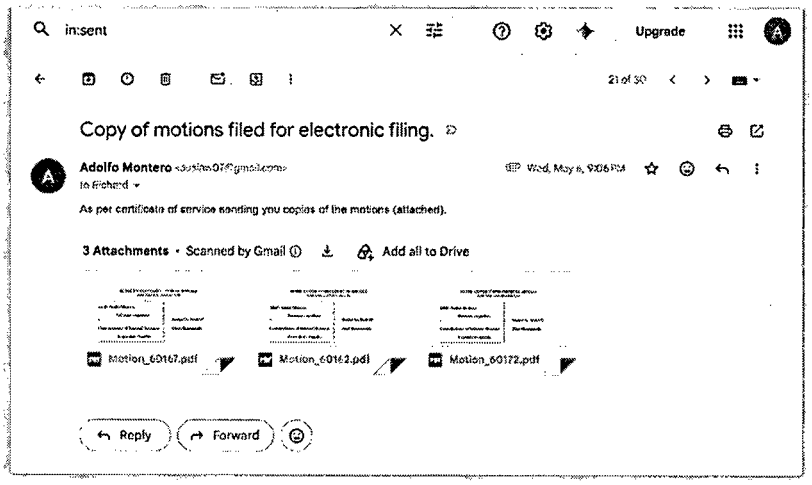
Reconfirmation only single attachment on Jul 26



Filing rejected marked as "marketing/NoReply"
No case number label



Different email example showing what 3 attachments looks like:



Rejection email contents:

Do Not Reply <no-reply@ca5.uscourts.gov>
Sun, Jul 26, 2026 at 4:41 PM
Timestamp: 2026-07-26 16:41:32

The error detected is:
Email contains more than one attachment.

Your email filing received 7/26/2026 is not being processed as it does not comply with one or more the filing requirements for the Pro Se Mailbox:

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• Documents in support must be filed the same date as the initial filing.
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(ALDGCH)
ARG 27 - Services Not Taxable/Thirteenth Amendment/Form of Servitude (13AMEND)
ARG 31 - IRC 861 for Individual Employees (IMF 861)
ARG 32 - IRC 3121 (FICA)
ARG 36 - Bosnian Refugees (BOSNREF)
ARG 37 - Not Liable (NTLIABL)
ARG 42 - Nunc Pro Tunc (NUNC)
ARG 44 - Zero Wages on a Substitute Form
ARG 48 - Prisoner Filings
ARG 50 - Non Taxable Social Security (SS) Benefits

Excerpt from Notice 2010-33

Positions that are the same as or similar to the following are frivolous.

(1) Compliance with the internal revenue laws is voluntary or optional and not required by law, including arguments that:

[... positions 2 through 43 ...]

(44) A taxpayer's income is not taxable if the taxpayer assigns or attributes the income to a **religious organization** (a "corporation sole" or ministerial trust) claimed to be tax-exempt **under section 501(c)(3)**, or similar arguments described as frivolous in Rev. Rul. 2004-27, 2004-1 C.B. 625.

*[**Note:** Rev. Rul. 2004-27: Tax avoidance schemes; meritless "corporation sole" arguments [...] a taxpayer cannot avoid income tax by establishing a religious organization for tax avoidance purposes.]*