

Repeat Frivolous Filing Offender

Cross References

- *Brian Dean Swanson*, T.C. Memo. 2024-105

IRC section 6673 allows the Tax Court to impose a penalty of up to \$25,000 whenever it appears to the court that the petitioner's position in a proceeding is frivolous. The court has discretion to impose no penalty with a warning, some of the penalty for a repeat offender, or the full penalty for a chronic repeat offender.

The petitioner in this case was a high school teacher and received W-2 wages of \$79,186, along with \$4,747 of federal income tax withholding. The petitioner also received a Form 1099-MISC that reported \$6,510 in rental income.

The petitioner timely filed his tax return for the tax year at issue and reported \$32,123 of pension income and \$15 of taxable interest. However, he reported zero W-2 wages and zero rental income. Attached to his return was Form 4852, *Substitute for Form W-2, Wage and Tax Statement*. On the line provided on the Form 4852 to explain how these amounts were determined, the petitioner stated:

This job is my source of capital. This capital does not qualify as "wages" as defined in 26 USC and the withholding payments made by this employer were erroneously withheld from money that is capital, not income. The W2 from this employer was issued in error.

The petitioner also sent the IRS a letter which included a "corrected" Form 1099-MISC with respect to the rent he received. In the letter, the petitioner stated:

This notice is submitted with a corrected 1099-MISC. The original sent to your agency incorrectly identified money paid to me as "rent." However, this payment merely represents the restoration of capital for tax purposes and should not be reported on a 1099-MISC.

The IRS issued a Notice of Deficiency for the unreported income. The petitioner then filed a petition with the Tax Court.

In court, the IRS moved to impose the full \$25,000 penalty for the petitioner's frivolous arguments. The court noted that the petitioner has a long history of taking frivolous positions with respect to his tax liability, and he has continued to take frivolous positions in this case. The Eleventh Circuit has sanctioned the petitioner in the amount of \$8,000 at least three separate times for taking such positions and the Southern District of Georgia has also sanctioned him by permanently enjoining him from filing refund suits in federal court for any tax year in which he has failed to report his wages as income. The Tax Court has also in a prior case sanctioned the petitioner \$15,000 for making frivolous arguments, and when the petitioner appealed that case to the Eleventh Circuit, the appeals court affirmed the Tax Court's opinion.

The court stated as these sanctions appear to have left the petitioner undeterred, it will grant the IRS's motion and impose a penalty of the full \$25,000 permitted in the hopes that the petitioner will in fact think and conform his conduct to settled principles going forward.