

IRS



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“DAY IN COURT” MAY BE COSTLY FOR FRIVOLOUS TAX CASE FILERS

WASHINGTON – Getting their “day in court” has been an expensive proposition for some people who have recently faced stiff penalties from the Tax Court, Appeals Courts and District Courts for pursuing frivolous tax cases. The Internal Revenue Service warns that the courts are sending a clear message to others who may be considering such positions – they do so at their own risk.

“Congress was concerned about taxpayers misusing the courts and obstructing the appeal rights of others when it enacted tougher sanctions in the 1980s,” said IRS Commissioner Charles O. Rossotti. “The courts are for resolving unclear issues of law, not a forum for repeating arguments that the courts have already rejected. Taxpayers intending to use the court as a soapbox should consider the potential cost.”

The law allows the courts to impose a penalty of up to \$25,000 when they come to any of three conclusions:

- a taxpayer instituted a proceeding primarily for delay,
- a position is frivolous or groundless, or
- a taxpayer unreasonably failed to pursue administrative remedies.

The courts’ determination to use their sanctions authority to discourage the filing of frivolous tax suits is evident in some case documents which are public.

This month, the Tax Court penalized two California residents in separate cases for trying to avoid taxes through the use of trusts. On June 21, the Court said that Charles and Francesca Sigersest of El Macero met all three of the above criteria and fined them \$15,000. The Court pointed out that the case was “a waste of limited judicial and administrative resources that could have been devoted to resolving bona fide claims of other taxpayers.” (Sigersest v. Commissioner)

On June 7, the Court found that Andy Hromiko of Roseville, Calif., not his trust, was the true earner of income. It noted that he had made “shopworn arguments characteristic of the tax-protester rhetoric that has been universally rejected by this and other courts,” and fined him \$12,500. (Matrixinfosys Trust v. Commissioner)

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Last Dec. 4, the Tax Court imposed a \$25,000 penalty against Hae-Rong and Lucy Ni, of San Jose, Calif. Contesting the IRS rejection of various deductions on their tax returns, the Nis were not responsive to orders for supporting records. Instead, they challenged the authority of the IRS to audit their returns and of the government to impose taxes. The Court concluded that the Nis had chosen “to pursue a strategy of noncooperation and delay, undertaken behind a smokescreen of frivolous tax-protester arguments.” The Court also imposed sanctions of more than \$10,600 against the Nis’ attorney, Crystal Sluyter, for arguing frivolous positions in bad faith. (The Nis Family Trust v. Commissioner)

While at the Federal Prison Camp in Duluth, Minn., for tax evasion, Darlow Madge contended that he wasn’t a taxpayer, that his income from selling hospital supplies wasn’t taxable, and that only foreign income is taxable. On Dec. 7, the Tax Court imposed the maximum \$25,000 fine after having warned Madge that continuing with his frivolous arguments would likely result in a penalty. (Madge v. Commissioner)

Regina Davis of Cincinnati, Ohio received a \$4,000 penalty from the Tax Court on April 10 for frivolous and groundless arguments, including that the IRS is not an agency of the United States and that it is a function of the Puerto Rican Bureau of Alcohol, Tobacco and Firearms. Davis persisted in her contentions even after the Court warned her that she could be fined for doing so. (Davis v. Commissioner)

The Tax Court is not the only place for arguing tax cases. Other courts are also experiencing frivolous cases and imposing sanctions.

On Feb. 2, the Tenth Circuit Court of Appeals imposed an \$8,000 penalty on Larry and Sandee Gass of Capulin, Col., for appealing district court decisions which rejected their contentions that taxes on income from real property are unconstitutional. The Appeals Court had earlier fined them \$2,000 for using the same arguments in another case. (Gass v. U.S.)

Michele Brashier and Richard Hembree, of Tulsa, Okla., each drew \$1,000 penalties on April 13 for arguing that requiring them to file sworn income tax returns violated their Fifth Amendment right against self-incrimination. The Tenth Circuit Court of Appeals noted that sanctions were warranted because the Tax Court had warned them that their argument -- rejected consistently for more than seventy years -- was frivolous. (Brashier v. Commissioner)

After losing the argument that his wages were not income and receiving a \$500 penalty, Garnell McAfee, Jr., of Flowery Branch, Ga., returned to U.S. District Court in Northern Georgia to try to stop the government from collecting the penalty by garnishing his wages. On April 4, the judge stated that “bringing this ill-considered, nonsensical litigation before this court for yet a second time is nothing but contumacious foolishness which wastes the time and energy of the court system.” He then imposed a \$1,000 penalty, added 10 percent to the original penalty, and ordered McAfee to pay the U.S. Marshal’s costs of serving the writ of garnishment on his employer. (McAfee v. U.S.)