

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

Robert Edward Orth,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 18049-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER AND DECISION**

This case is currently set for trial at the session of the Court commencing on October 30, 2017, in Indianapolis, Indiana. The Commissioner determined that Mr. Orth had unreported nonemployee compensation resulting in deficiencies for 2012 and 2013, along with additions to tax for failure to file, failure to pay, and failure to make estimated tax payments. On May 16, 2016, the Commissioner sent Mr. Orth a notice of deficiency for 2012 and 2013, and Mr. Orth filed a timely petition. At the time of the petition, Mr. Orth resided in Indianapolis, Indiana.

Pending before the Court is the Commissioner's motion for summary judgment filed August 31, 2017. In his motion, the Commissioner argues that Mr. Orth did not raise any factual dispute and that the legal issues are ripe for decision. Because Mr. Orth only offers arguments as to why he should not be taxed, the Commissioner alleges there is no genuine dispute as to any material fact for trial. Specifically, the Commissioner argues that he is entitled to summary judgment on the issue of unreported income because Mr. Orth does not dispute receiving nonemployee compensation for the years at issue. The Commissioner conceded the addition to tax for failure to make estimated tax payments for 2012.

As for the other additions to tax, the Commissioner argues that he is entitled to summary judgment because the Commissioner has provided records to demonstrate that they apply, and Mr. Orth failed to dispute the additions. To support the motion, the Commissioner filed a signed certification of lack of record for 2012 and 2013 and certificates of assessment, payments, and other specified matters for 2012 and 2013. The certificates of assessment show that the Commissioner generated a substitute for return and subsequently issued Mr. Orth a

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notice of deficiency for those years. They also indicate that Mr. Orth did not make any payments for 2012 and 2013.

In his response to the Commissioner's motion, Mr. Orth does not dispute any facts set forth in the Commissioner's motion. Mr. Orth does not dispute the fact that he did not timely file his income tax returns, or that he failed to make payments towards his 2012 and 2013 tax liability. Instead, he asserts a variety of frivolous arguments briefly discussed below.

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials.<sup>1</sup> However, summary judgment is not a substitute for trial and should not be invoked in proceedings where the facts are disputed.<sup>2</sup> We may grant summary judgment only if "there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law."<sup>3</sup>

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of any material fact.<sup>4</sup> "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party."<sup>5</sup> When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.

Mr. Orth has not set forth any facts showing that there is a genuine dispute for trial. Neither his petition nor his response to the motion for summary judgment contest the facts set out by the Commissioner. We conclude that a decision may be rendered as a matter of law.

Mr. Orth makes a frivolous argument about the application of section 83. He claims that section 83 does not apply to compensation for services. But section

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<sup>1</sup> RSW Enterprises, Inc. v. Commissioner, 143 T.C. 401, 404 (2014); Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

<sup>2</sup> Shiosaki v. Commissioner, 61 T.C. 861, 862 (1974).

<sup>3</sup> Rule 121(b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

<sup>4</sup> Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

<sup>5</sup> FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

61 includes in gross income compensation for services. Section 83 is one of several provisions that specifically include items in income, but it does not displace the general rule that compensation for services is income. Mr. Orth's section 83 argument is frivolous. And we have previously held that it is frivolous.<sup>6</sup>

Likewise, Mr. Orth's claim that self-employment tax does not apply to U.S. citizens is baseless. Self-employment tax applies to individuals other than nonresident aliens.<sup>7</sup>

Mr. Orth raises the issue of whether this deficiency case is subject to the Administrative Procedures Act (APA). He concludes that it is and cites to a collection case for that proposition. His citation is erroneous; deficiency cases are not subject to the APA.<sup>8</sup>

Mr. Orth raises the concern that presenting his frivolous arguments in our Court may lead to a sanction being imposed against him. He is right to be concerned.<sup>9</sup> Raising frivolous arguments wastes precious court resources. One purpose of sanctions is to deter frivolous arguments from being presented or perpetuated. Although that is precisely what Mr. Orth did, we will not impose a sanction. Rather, we caution him against making frivolous arguments in the future. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment is granted. It is further

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<sup>6</sup> Santangelo v. Commissioner, T.C. Memo. 1995-468, aff'd, 87 F.3d 1322 (9th Cir. 1996). Notably, Mr. Orth cited Santangelo in his petition, but we suspect he did so unknowingly. His petition and his response to the motion for summary judgment appear to be cobbled together, verbatim, from the tax protester Website WEvGOV.com. On the internet, one can find many variations of the quote "Don't believe everything you read on the internet", most often attributed to Abraham Lincoln. See, e.g., <https://www.thoughtco.com/the-problem-with-quotes-on-the-internet-3970560>. That meme, even with its apocryphal provenance, is worth heeding.

<sup>7</sup> Sec. 1402(b).

<sup>8</sup> QinetiQ U.S. Holdings, Inc. & Subsidiaries v. Commissioner, 845 F.3d 555, 561 (4th Cir. 2017), aff'g T.C. Memo. 2015-123; Ax v. Commissioner, 146 T.C. 153, 163 (2016).

<sup>9</sup> See sec. 6673(a)(1)(B).

ORDERED and DECIDED that there are deficiencies in income tax and additions to tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax/Penalties</u>		
		<u>6651(a)(1)</u>	<u>I.R.C. §§ 6651(a)(2)</u>	<u>6654(a)</u>
2012	\$31,176.00	\$7,014.60	\$5,455.80	\$ 0.00
2013	\$40,391.00	\$9,087.98	\$4,644.97	\$ 725.29

**(Signed) Ronald L. Buch**  
**Judge**

ENTERED: **OCT 12 2017**