

Sub. J. Halpern

JMP/

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ALEXANDER HYATT,)	
)	
Petitioner)	
)	
v.)	Docket No. 22711-09L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

O R D E R

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial of the above case before Judge James S. Halpern at New York, New York (Westbury) on September 23, 2010, containing his oral findings of fact and opinion rendered at the conclusion of trial.

In accordance with the oral findings of fact and opinion, an appropriate order and decision will be entered.

**(Signed) James S. Halpern
Judge**

Dated: Washington, D.C.
October 28, 2010

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1 BENCH OPINION BY JUDGE JAMES S. HALPERN

2 ALEXANDER HYATT V. COMMISSIONER

3 DOCKET NO.: 22711-09L DATE: September 23, 2010

4 The Court has decided to render oral
5 findings of fact and opinion in this case, and the
6 following represents the Court's oral findings of fact
7 and opinion.

8 This bench opinion is made pursuant to the
9 authority granted by section 7459(b) of the Internal
10 Revenue Code of 1986, as amended, and Rule 152 of the
11 Tax Court Rules of Practice and Procedure.

12 Unless otherwise indicated, all section
13 references are to the Internal Revenue Code in effect
14 for the years in issue, and all Rule references are to
15 the Tax Court Rules of Practice and Procedure.

16 Petitioner resided in New York at the time he filed
17 the petition. Petitioner bears the burden of proof.

18 This case is before the Court pursuant to a
19 petition filed under Section 6330(d) for review of a
20 determination by Respondent's Office of Appeals. By
21 Notice of Determination Concerning Collection
22 Action(s) Under Section 6320 and/or 6330, dated August
23 19, 2009 (the notice), Appeals determined that it was
24 appropriate to proceed by levy to collect Petitioner's
25 2004 and 2005 Federal Income Tax liabilities.

1 Petitioner assigns error to the notice on
2 the ground that the determination contained in the
3 notice is arbitrary and capricious in that it fails to
4 address the issues he raised. In support of his
5 assignment of error, Petitioner claims that (1) no
6 evidence was presented to him of a substitute for
7 return, (2) he was not provided with any rebuttal to
8 his explanation as to why he was not required to file
9 an income tax return, and (3) again, the IRS is in
10 default in not explaining to him why he must file a
11 return.

12 At trial, we received into evidence the
13 record of Petitioner's hearing before Appeals.
14 Respondent determined deficiencies in tax of \$10,469
15 and \$9,259, along with additions to tax, for
16 Petitioner's 2004 and 2005 taxable years,
17 respectively. The notice of intent to levy that
18 triggered this case shows that, as of January 1, 2009,
19 Petitioner owed the total amount of \$34,607.21 for
20 2004 and 2005. We offered him the opportunity, but
21 Petitioner failed to show that his underlying
22 liabilities for those years was any less than
23 determined by Respondent.

24 Petitioner is mistaken that Respondent must
25 prepare a substitute for return on a taxpayer's behalf

1 before determining a deficiency in tax. E.g., Watson
2 v Commissioner, T.C. Memo, 2007-146.

3 Petitioner has been before this Court on
4 previous occasions, see docket numbers 7221-07L,
5 26157-08, 8771-08L, and we have no doubt that he knows
6 he is required to file Federal Income Tax returns. We
7 quote from our bench opinion in docket number 26157-
8 08:

9 Suffice it to say that Petitioner is a
10 taxpayer subject to the Federal Income Tax who is
11 obliged to file a Federal Income Tax return and pay
12 Federal income tax on his income, specifically
13 including wages, capital gain, and interest. See
14 sections 1, 61(a)(1), (3) and (4), 6012(a)(1),
15 7701(a)(1) and (14). See also United States v Romero,
16 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for
17 labor or services, paid in the form of wages or
18 salary, has been universally held by the courts of
19 this republic to be income, subject to the income tax
20 laws currently applicable."); Monaco v Commissioner,
21 T.C. Memo. 1998-284, categorically rejecting the
22 argument that the Commissioner may not determine a
23 deficiency without first making an assessment, and
24 affirming the principle that a taxpayer's failure to
25 report tax on a return does not prevent the

1 Commissioner from determining a deficiency in that
2 taxpayer's income tax.

3 Petitioner has failed to demonstrate error
4 in Appeals's determinations to proceed with collection
5 by levy of Petitioner's 2004 and 2005 liabilities, and
6 we sustain those determinations.

7 As relevant herein, section 6673(a)(1)
8 authorizes the Tax Court to require a taxpayer to pay
9 to the United States a penalty not in excess of
10 \$25,000 whenever it appears that proceedings have been
11 instituted or maintained by the taxpayer primarily for
12 delay or that the taxpayer's position in such
13 proceeding is frivolous or groundless. We are
14 convinced that Petitioner has no legitimate grounds
15 for challenging the notice. Rather, Petitioner's
16 arguments in this case and Petitioner's previous
17 appearances before this Court demonstrate that
18 Petitioner regards this case as a vehicle to protest
19 the tax laws of this country and espouse his own
20 misguided views.

21 A petition to this Court is frivolous "if it
22 is contrary to established law and unsupported by a
23 reasoned, colorable argument for change in the law."
24 Coleman v Commissioner, 791 F.2d 68, 71 (7th Cir.
25 1986). Petitioner's position, as set forth in the

1 petition, his motion for summary judgment, together
2 with his memorandum in support of that motion, and
3 during the trial of this case, is principally an
4 argument that he has no obligation to file tax returns
5 unless, perhaps, the Commissioner can prove to him
6 that he has such an obligation. Based on well-
7 established law, Petitioner's position is frivolous
8 and groundless. E.g., Johnston v Commissioner, T.C.
9 Memo. 2004-107 (holding frivolous the contentions that
10 the Commissioner cannot determine a deficiency for a
11 year for which a return was not filed and that a
12 taxpayer's failure to file a return shields the
13 taxpayer from tax liability).

14 We are also convinced that Petitioner
15 instituted and maintained this proceeding primarily,
16 if not exclusively, for purposes of delay. Having to
17 deal with this matter wasted the Court's time, as well
18 as Respondent's.

19 In Petitioner's three prior appearances
20 before this Court, he attracted penalties under
21 Section 6673(a)(1) of \$5,000, \$7,500 and \$10,000, in
22 docket numbers 7221-07L, 26157-08, and 8771-08L,
23 respectively. Petitioner has not been deterred, and
24 we think it appropriate to penalize him to the maximum
25 extent possible. We therefore shall impose on him a

1 6673(a)(1) penalty of \$25,000.

2 We shall enter an Order And Decision (1)
3 ordering and deciding that Respondent may proceed with
4 levies for 2004 and 2005 and (2) ordering and deciding
5 that Petitioner is liable for a penalty under section
6 6673(a)(1) of \$25,000.

7 This concludes the Court's oral findings of
8 fact and opinion in this case.

9 (Whereupon, at 3:08 p.m., the bench opinion
10 in the above-entitled matter was concluded.)

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