

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

CLC

ALAN DAVID COOPER, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 4123-19.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER**

The Commissioner has filed a motion (Doc. 21) for summary judgment and for the imposition of penalty under section 6673(a)(1) for maintaining frivolous positions. We will order petitioner Alan David Cooper to file a response.

Background

In a statutory notice of deficiency (“SNOD”) dated December 12, 2018 (Doc. 3, page “OA1”; Doc. 8, Ex. B), the IRS determined a deficiency of \$2,430 in Mr. Cooper’s income tax for the year 2015, arising from his failure to report an IRA distribution, wages, and social security benefits, and determined an addition to tax of \$238.70 under section 6651(a)(1) for failure to timely file a tax return. Mr. Cooper challenged the SNOD by timely filing in this Court a petition (Doc. 1) that included frivolous positions and an amended petition (Doc. 3), likewise frivolous, that cites “Cracking the Code: The Fascinating Truth About Taxation In America”. Mr. Cooper then filed a motion for summary judgment (Doc. 5) that likewise cites and extols “Cracking the Code”. The Court denied the motion summarily without requiring the Commissioner to respond and without issuing an opinion. (See Doc. 6.)

We do not discern in any of Mr. Cooper’s filings to date any denial of his receipt in 2015 of the items of income adjusted in the SNOD or any claim of an entitlement to deductions or credits that might reduce his 2015 liability.

**SERVED Sep 23 2019**

The Commissioner has now moved for summary judgment, contending that there is no genuine issue of material fact as to Mr. Cooper's 2015 liability. The motion also includes a request that we impose on Mr. Cooper a penalty under section 6673(a)(1)(B) for maintaining frivolous positions.

### Discussion

The positions in Mr. Cooper's petition, amended petition, and motion for summary judgment are evidently inspired by the book "Cracking the Code". This is a book that promotes pseudo-legal arguments that the courts have uniformly rejected and that have yielded its author a criminal conviction. Our opinion in Waltner v. Commissioner, T.C. Memo. 2014-35, gives an explication of errors and fallacies in that book. We direct Mr. Cooper to read the Waltner opinion (available under the "Opinions Search" tab on the Tax Court's website, [www.ustaxcourt.gov](http://www.ustaxcourt.gov)) before making any further filings in this case, because we will hold him responsible for knowing what Waltner says about "Cracking the Code".

We will order Mr. Cooper to file a response to the Commissioner's motion for summary judgment. In that response he should advance any good-faith arguments that he can make to show that he did not receive the items of income that were adjusted in the SNOD, or that he is entitled to deductions or credits that might reduce his 2015 liability, or that he is not liable for the failure-to-timely-file addition to tax.

In his response, Mr. Cooper should not make frivolous arguments contending that he is immune from the income tax. Of course, America is a free country, and Mr. Cooper is free to believe in his own mind and heart whatever he believes about any subject, including taxes. But he is not free to maintain litigation as an opportunity to press foredoomed arguments that the courts have rejected. The outcome of those arguments would inevitably be failure, and the only possible purposes for pressing them would be to delay the assessment of his proper tax liability and to impose expense and burden on the IRS and the Tax Court.

In his response to the Commissioner's motion, Mr. Cooper should also make any good-faith argument he wishes to make to the effect that he should not be held liable for the penalty under section 6673(a)(1). That section provides that where proceedings are "instituted or maintained by the taxpayer primarily for delay" or where "the taxpayer's position ... is frivolous or groundless, ... the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in

excess of \$25,000.” Without prejudging the matter, we observe that Mr. Cooper’s conduct to date seems to fall within the ambit of section 6673: That is, the positions about the Constitution and the Internal Revenue Code that he advanced in his petition, amended petition, and motion are indeed frivolous.

However, we will give Mr. Cooper an opportunity to comment on factors that might mitigate his culpability, or that should influence the amount of penalty that we impose (up to the statutory maximum of \$25,000). For a non-exclusive list of such factors the Court can consider, Mr. Cooper should read Leyshon v. Commissioner, T.C. Memo. 2015-104, \*25-\*29 (prior proceedings; prior warnings; prior penalties; non-frivolous arguments; protest; amount at issue; taxpayer's background; burden; conduct; other harm to the taxpayer; future compliance; punitive and deterrent effects). In particular, if Mr. Cooper were to commit to refrain from asserting frivolous arguments in future proceedings, his commitment would likely influence our decision. We take no pleasure in imposing penalties; the principal purpose of the penalties is to deter future abuse; and if Mr. Cooper plausibly undertakes to refrain from future abuse, then the need to impose a penalty might be reduced.

On the other hand, if Mr. Cooper were instead to renew his frivolous arguments in response to this order, then it would appear that mere admonition cannot affect his behavior but rather that penalties might be necessary. We hope that will not be the case.

It is therefore

ORDERED that, no later than October 21, 2019, Mr. Cooper shall file a response to the Commissioner’s motion, in compliance with the instructions given above. It is further

ORDERED that, no later than November 8, 2019, the Commissioner shall file a reply to Mr. Cooper’s response (or, if he has not filed a response, then a status report so stating).

**(Signed) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
September 23, 2019