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#9Frivolous Issues Penalty Under IRC § 6673 and Related  
Appellate-Level Sanctions

## SUMMARY

From June 1, 2014, through May 31, 2015, the federal courts issued decisions in at least 22 cases involving the Internal Revenue Code (IRC) § 6673 “frivolous issues” penalty and at least four additional cases involving analogous penalties at the appellate level.<sup>1</sup> These penalties are imposed against taxpayers for maintaining a case primarily for delay, raising frivolous arguments, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.<sup>2</sup> In many of the cases we reviewed, taxpayers escaped liability for the penalty but were warned they could face sanctions for similar conduct in the future.<sup>3</sup> Nonetheless, we included these cases in our analysis to illustrate what conduct will and will not be tolerated by the courts.

TAXPAYER RIGHTS IMPACTED<sup>4</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS’s Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

## PRESENT LAW

The U.S. Tax Court is authorized to impose a penalty against a taxpayer if the taxpayer institutes or maintains a proceeding primarily for delay, takes a frivolous position in a proceeding, or unreasonably fails to pursue available administrative remedies.<sup>5</sup> The maximum penalty for taxpayers is \$25,000.<sup>6</sup> In some cases, the IRS requests that the Tax Court impose the penalty;<sup>7</sup> in other cases, the Tax Court exercises its discretion, *sua sponte*,<sup>8</sup> to do so.

- 1 Analogous penalties at the appellate level include those under IRC § 7482 (c)(4), FED. R. APP. P. 38, or other authority.
- 2 The Tax Court generally imposes the penalty under IRC § 6673(a)(1). Other courts may impose the penalty under IRC § 6673(b)(1). U.S. Courts of Appeals generally impose sanctions under IRC § 7482(c)(4), 28 U.S.C. § 1927, or Rule 38 of the Federal Rules of Appellate Procedure, although some appellate-level penalties may be imposed under other authorities.
- 3 See, e.g., *Kaye v. Comm’r*, T.C. Memo. 2014-145.
- 4 See Taxpayer Bill of Rights, available at [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights).
- 5 IRC §§ 6673(a)(1)(A), (B), and (C). Likewise, the Tax Court may impose a penalty under IRC § 6673(a)(2) against any person admitted to practice before the Tax Court for unreasonably and vexatiously multiplying the proceedings in any case.
- 6 IRC § 6673(a)(1).
- 7 The standards for the IRS’s decision to seek sanctions under IRC § 6673(a)(1) are found in the Chief Counsel Directives Manual. See CCDM 35.10.2 (Aug. 11, 2004). For sanctions under IRC § 6673(a)(2) of attorneys or other persons admitted to practice before the Tax Court, all requests for sanctions are reviewed by the designated agency sanctions officer (currently the Associate Chief Counsel (Procedure & Administration)). This review ensures uniformity on a national basis. See, e.g., CCDM 35.10.2.2.3 (Aug. 11, 2004).
- 8 “*Sua sponte*” means without prompting or suggestion; on its own motion. BLACK’S LAW DICTIONARY (10th ed. 2014). Thus, for conduct that it finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested the penalty. See, e.g., *Patton v. Comm’r*, T.C. Memo. 2015-75, appeal docketed, No. 15-2007 (6th Cir. Aug. 25, 2015).

Taxpayers who institute actions under IRC § 7433<sup>9</sup> for certain unauthorized collection actions can be subject to a maximum penalty of \$10,000 if the court determines that the taxpayer's position in the proceedings is frivolous or groundless.<sup>10</sup> In addition, IRC § 7482(c)(4),<sup>11</sup> §§ 1912 and 1927 of Title 28 of the U.S. Code,<sup>12</sup> and Rule 38 of the Federal Rules of Appellate Procedure<sup>13</sup> (among other laws and rules of procedure) authorize federal courts to impose penalties against taxpayers or their representatives for raising frivolous arguments or using litigation tactics primarily to delay the collection process. Because the sources of authority for imposing appellate-level sanctions are numerous and some of these sanctions may be imposed in non-tax cases, this report focuses primarily on the IRC § 6673 penalty.

## ANALYSIS OF LITIGATED CASES

We analyzed 22 opinions issued between June 1, 2014, and May 31, 2015, in which courts addressed the IRC § 6673 penalty. Twenty-one of these opinions were issued by the Tax Court, and one was issued by a U.S. Court of Appeals in a case brought by a taxpayer who sought review of the Tax Court's imposition of the penalty. The Court of Appeals sustained the Tax Court's position. Four additional case decisions were issued by the Courts of Appeals on analogous appellate level penalties under IRC § 7482 (c)(4), FRAP Rule 38, or other authority. Table 9 in Appendix 3 includes all 26 of these opinions in total.

In ten cases, the Tax Court imposed penalties under IRC § 6673, with the amounts ranging from \$500 to \$25,000. In seven cases before the Tax Court, taxpayers prevailed when the IRS requested a penalty. In each of these cases, the Tax Court warned the taxpayers not to bring similar arguments in the future.<sup>14</sup> Two taxpayers were represented by an attorney; the taxpayers in the remaining 20 cases appeared *pro se* (represented themselves). In at least one case, the Tax Court noted that the *pro se* taxpayer may not be familiar with all the rules and procedures of the court and thus opted to not impose the penalty. But the Tax Court nonetheless made clear that “*Pro se* status, however, isn't a license to litter the dockets of the Federal courts with ridiculous allegations concerning the Code.”<sup>15</sup>

The taxpayers presented a wide variety of arguments challenging the U.S. tax system that the courts have generally rejected on numerous occasions. Upon encountering these arguments, the courts in nine of 22 cases cited the language set forth in *Crain v. Commissioner*:

We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. The

9 IRC § 7433(a) allows a taxpayer a civil cause of action against the United States, if an IRS employee intentionally or recklessly, or by reason of negligence, disregards any IRC provision or Treasury regulation in connection with collecting the taxpayer's federal tax liability.

10 IRC § 6673(b)(1).

11 IRC § 7482(c)(4) provides that the United States Courts of Appeals and the Supreme Court have the authority to impose a penalty in any case where the Tax Court's decision is affirmed and the appeal was instituted or maintained primarily for delay or the taxpayer's position in the appeal was frivolous or groundless.

12 28 U.S.C. § 1912 provides that when the Supreme Court or a United States Court of Appeals affirms a judgment, the court has the discretion to award to the prevailing party just damages for the delay, and single or double costs. 28 U.S.C. § 1927 authorizes federal courts to sanction an attorney or any other person admitted to practice before any court of the United States or any territory thereof for unreasonably and vexatiously multiplying proceedings; such person may be required to personally pay the excess costs, expenses, and attorneys' fees reasonably incurred because of his or her conduct.

13 Federal Rule of Appellate Procedure 38 provides that if a United States Court of Appeals determines an appeal is frivolous, the court may award damages and single or double costs to the appellee.

14 See, e.g., *Bowers v. Comm'r*, T.C. Memo. 2014-130.

15 *Id.*

constitutionality of our income tax system — including the role played within that system by the Internal Revenue Service and the Tax Court — has long been established.<sup>16</sup>

In the Tax Court cases we reviewed, taxpayers raised the following issues that the court deemed frivolous and thus subjected the taxpayers to a penalty under IRC § 6673(a)(1) (or, in some cases, the court warned that such arguments were frivolous and could lead to a penalty in the future, if the taxpayers maintained the same positions):

- **Taxes and procedures to collect taxes are unconstitutional:** We only identified one case this year where a taxpayer made an argument that taxes or how they are collected are unconstitutional.<sup>17</sup> Previous years have seen additional taxpayers advance similar arguments to no avail.<sup>18</sup> The taxpayer in the one case who made constitutional arguments this year advanced many facets of the various common constitutional arguments seen in other cases over the years, including the 16th Amendment only authorizes excise taxes, and levies violate both the Fourth and Fifth Amendments. The court found sanctions were appropriate in this case.
- **The IRS lacks proper authority:** Taxpayers in at least four cases argued that the IRS lacked the authority to take the proposed actions.<sup>19</sup> In two of these cases, taxpayers asserted that the employees who issued various notices did not have the proper delegation of authority to authorize the proposed action.<sup>20</sup> The IRS prevailed in two cases,<sup>21</sup> and although the taxpayers prevailed in the remaining two cases, the court warned the taxpayers not to pursue similar arguments in the future.<sup>22</sup>
- **Taxpayers are not United States persons or United States income is not taxable:** Taxpayers in three cases presented arguments that they are not United States persons subject to tax or that United States income is not taxable.<sup>23</sup> In one case, a taxpayer argued that he was a resident of the independent area of Harris County, TX, which is not in the United States.<sup>24</sup> The court imposed a penalty of \$8,000 under Rule 38 of the Federal Rules of Appellate Procedure.

## CONCLUSION

Taxpayers in the cases analyzed this year presented the same arguments raised and repeated year after year that the courts routinely and universally reject.<sup>25</sup> Taxpayers avoided the IRC § 6673 penalty in only seven cases where the IRS requested it, and in each of these cases, the courts warned the taxpayer not to bring similar arguments in the future, demonstrating the willingness of the courts to penalize taxpayers when they offer frivolous arguments or institute a case merely for delay. Moreover, even when the Tax Court

16 *Crain v. Comm'r*, 737 F.2d 1417, 1417-18 (5th Cir. 1984). See, e.g., *Rader v. Comm'r*, 143 T.C. 376 (2014).

17 *Taliaferro v. Freeman*, 595 F. App'x 961 (11th Cir. 2014), *aff'g Taliaferro v. U.S.*, 113 A.F.T.R.2d (RIA) 1840 (M.D. Ga. 2014).

18 See, e.g., National Taxpayer Advocate 2014 Annual Report to Congress 510-12.

19 See, e.g., *Muncy v. Comm'r*, T.C. Memo. 2014-251, *appeal docketed*, No. 15-1626 (8th Cir. Mar. 26, 2015).

20 *May v. Comm'r*, T.C. Memo. 2014-194; *Muncy v. Comm'r*, T.C. Memo. 2014-251, *appeal docketed*, No. 15-1626 (8th Cir. Mar. 26, 2015).

21 *Banister v. Comm'r*, T.C. Memo. 2015-10, *appeal docketed*, No. 15-71103 (9th Cir. Apr. 9, 2015); *May v. Comm'r*, T.C. Memo. 2014-194.

22 *Bowers v. Comm'r*, T.C. Memo. 2014-130; *Muncy v. Comm'r*, T.C. Memo. 2014-251, *appeal docketed*, No. 15-1626 (8th Cir. Mar. 26, 2015).

23 See, e.g., *U.S. v. Trowbridge*, 591 F. App'x 298 (5th Cir. 2015), *aff'g* Docket No. 4:14-CV-00027 (S.D. Tex. May 22, 2014), *cert. denied*, 135 S.Ct. 2816 (June 8, 2015); *Bennett v. Comm'r*, T.C. Memo. 2014-256, *appeal docketed*, No. 15-71228 (9th Cir. Apr. 21, 2015); *Banister v. Comm'r*, T.C. Memo. 2015-10, *appeal docketed*, No. 15-71103 (9th Cir. Apr. 9, 2015).

24 *U.S. v. Trowbridge*, 591 F. App'x 298 (5th Cir. 2015), *aff'g* Docket No. 4:14-CV-00027 (S.D. Tex. May 22, 2014), *cert. denied*, 135 S.Ct. 2816 (June 8, 2015).

25 See, e.g., National Taxpayer Advocate 2014 Annual Report to Congress 510-12.

acknowledges that a penalty will likely not dissuade the taxpayer from raising frivolous arguments in the future, the Tax Court nonetheless recognizes that “serious sanctions also serve to warn other taxpayers to avoid pursuing similar tactics.”<sup>26</sup> Further, when the IRS has not requested the penalty, the court may nonetheless raise the issue *sua sponte*, and in all cases identified, either imposed the penalty or cautioned the taxpayer that similar future behavior will result in a penalty.<sup>27</sup>

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26 *Bennett v. Comm’r*, T.C. Memo. 2014-256, *appeal docketed*, No. 15-71228 (9th Cir. Apr. 21, 2015). See also *Banister v. Comm’r*, T.C. Memo. 2015-10, *appeal docketed*, No. 15-71103 (9th Cir. Apr. 9, 2015).

27 See, e.g., *Kaye v. Comm’r*, T.C. Memo. 2014-145 (court raised the issue *sua sponte* and warned the taxpayer not to assert similar arguments in the future).