

Gross Income Under IRC § 61

TAXPAYER RIGHTS IMPACTED¹

- *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*

OVERVIEW

Section 61(a) of the IRC defines gross income as “all income from whatever source derived.” The income covered by IRC § 61 includes, but is not limited to, compensation for services, income from business activities, and income from dealings in property.

TAS has monitored the most litigated issues for the last 20 years, and controversies involving what constitutes gross income have always been at or near the top of this list.² Litigation is often attributable to disagreements regarding what constitutes accessions to wealth, taxable as income under IRC § 61. Likewise, controversies arise regarding the scope of specific statutory exclusions from gross income. In most years, very few cases break new ground or add to the legal landscape under IRC § 61. Such was the case again this year.³

By and large, the 62 opinions we reviewed involved unrepresented taxpayers (*pro se*) and the IRS prevailed in an overwhelming majority of cases. During this same period, taxpayers petitioned Tax Court in 3,771 cases where gross income was an issue during the examination.⁴

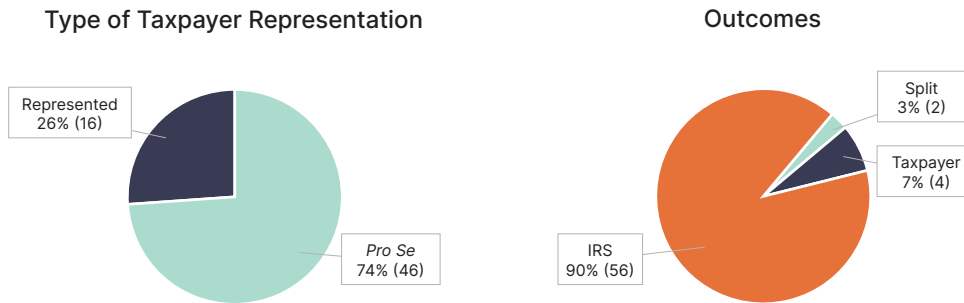
1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 National Taxpayer Advocate 2000 Annual Report to Congress 70.

3 TAS analyzed cases handed down during the period beginning on June 1, 2019, and ending on May 31, 2020.

4 IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019, and May 31, 2020. TAS matched this data to the cases identified by examination where an adjustment to gross income was recommended as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (CDW) (Dec. 2020). TAS also matched this data to the Individual Master File (IMF) transaction history table on CDW which showed an additional 4,350 taxpayers petitioned Tax Court as a result of changes recommended during the Automated Under Reporter process.

FIGURE 2.5.1⁵



ANALYSIS OF LITIGATED CASES

IRC § 61 and related sections give rise to litigation in a variety of areas. Figure 2.5.2 shows the issues from this year’s cases.

FIGURE 2.5.2, Gross Income Issues⁶

Issue	Type of Taxpayer	
	Individual	Business
Unreported income	10	20
Income includible/excludible	5	6
Income from retirement sources	9	0
Frivolous arguments outside of IRC § 6702	4	2
Foreign earned income exclusion under IRC § 911	4	0
Settlement proceeds/damages under IRC § 104(a)(2)	1	1
Parsonage exclusion under IRC § 107(2)	0	1
Tax benefit rule under IRC § 111	1	0
Cancellation of debt under IRC § 108	2	1
Cost of goods sold	0	2

5 In this year’s gross income cases identified by TAS, 46 involved unrepresented taxpayers, while 16 involved taxpayers with representation. The IRS fully prevailed in 56 cases, while taxpayers fully prevailed in four. The remaining two opinions resulted in split opinions. TAS has increased the percentage of cases where the taxpayer prevailed from 6.45 percent to seven percent for Figure 2.5.1 so that the pie chart shows 100 percent.

6 Multiple issues may appear within one case; therefore, these figures exceed the total case count. For purposes of categorizing issues, we look to the specific contentions raised by taxpayers and analyzed by the courts. If, for example, a taxpayer’s basis for exclusion is a particular code section, then we would reflect the issue accordingly. By contrast, if the discussion primarily involved conceptual or infrequently occurring legal arguments, these contentions would fall into the “income includible/excludible” category. Finally, if taxpayers failed to report gross income in the first instance and then did not articulate a legal position to support that failure, such cases would be grouped as “unreported income.”

As shown in Figure 2.5.2, many issues arise on a reoccurring basis. The case law is sufficiently well-settled and spans so many different fact patterns, however, that key opinions providing new insights or revised precedents are rarely decided. Such was the case this year and, although a number of the opinions make for fascinating reading, we have not identified any that call for separate analysis here.

CONCLUSION

As witnessed by the IRS's success, most opinions in this area resulted either from taxpayer confusion regarding the applicable legal requirements or from taxpayers' occasional attempts to push the envelope. As a result, the National Taxpayer Advocate has no specific recommendations in this area.