

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

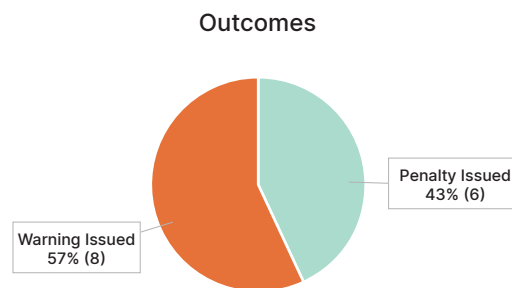
TAXPAYER RIGHT IMPACTED¹

- *The Right to Appeal an IRS Decision in an Independent Forum*

OVERVIEW

From June 1, 2019, through May 31, 2020, the federal courts issued decisions in at least 14 cases involving the IRC § 6673 “frivolous issues” penalty, with two cases involving an analogous penalty at the appellate level. This litigation focuses on penalties for maintaining a case primarily for delay, raising arguments deemed frivolous by the courts, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.² In all 14 of the cases analyzed by TAS, taxpayers were unrepresented. Although none of them prevailed, in most (57 percent) of the decisions we analyzed, taxpayers escaped liability for the penalty with only a warning they could face sanctions for similar conduct in the future.³ This year, no cases presented novel legal questions under IRC § 6673 and related appellate-level sanctions.

FIGURE 2.10.1⁴



- 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 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 are authorized to impose sanctions under IRC § 7482(c)(4), 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., *Tartt v. Comm’r*, T.C. Memo. 2019-112 (concluding that the taxpayer’s positions were “frivolous” but recognizing it was his first appearance before the court and therefore letting him off with just a warning).
- 4 The IRS fully prevailed in all 14 cases. In six cases, a penalty was issued. In eight cases, taxpayers were warned.

ANALYSIS OF LITIGATED CASES

Case law in this area is considered well-settled, and the numerous arguments presented by taxpayers have been universally deemed frivolous and rejected by the courts. Taxpayers challenge the legality of tax laws, claim exemption from tax liabilities, and argue creative variations on these themes.⁵ Upon encountering these arguments, the courts almost invariably cite 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 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.⁶

Upon deciding to issue a penalty, the amount varied, regardless of the type of frivolous argument being raised.⁷ The Tax Court has indicated, however, that it can be lenient when it is the taxpayer's first court appearance.⁸ Instead, taxpayers were warned in these cases not to bring similar arguments in the future, demonstrating the willingness of the courts to penalize taxpayers if taxpayers persisted in raising frivolous arguments. Taxpayers were always warned in previous proceedings before a penalty was issued. Where the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.⁹

CONCLUSION

Taxpayers in the cases analyzed this year presented the same arguments raised and repeated year after year, which the courts routinely and universally reject.¹⁰ Considering that all taxpayers in the examined cases were unrepresented, Congress and the IRS may consider increasing the visibility and availability of Low Income Taxpayer Clinics to provide assistance to eligible taxpayers who may otherwise make frivolous arguments. Congress may consider increasing funding for publicity and require the IRS to increase publicity efforts.

5 See, e.g., *Staples v. Comm'r*, T.C. Memo. 2019-75 (rejecting the taxpayer's argument that the law did not require him to file a federal income tax return or pay federal income tax).

6 *Crain v. Comm'r*, 737 F.2d 1417-18 (5th Cir. 1984). See, e.g., *Wells v. Comm'r*, T.C. Memo. 2019-134.

7 Penalties assessed during this review period ranged from \$1,000 to \$10,000.

8 See, e.g., *Hayes v. Comm'r*, T.C. Memo. 2019-147. Taxpayers avoided the IRC § 6673 penalty in six cases where the IRS requested it.

9 "Sua sponte" means without prompting or suggestion; on its own motion. BLACK'S LAW DICTIONARY (10th ed. 2014). 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., *Wells v. Comm'r*, T.C. Memo. 2019-134.

10 See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress 204-207 (Most Litigated Issue: *Frivolous Issues Penalty Under § 6673 and Related Appellate-Level Sanctions*).