APPELLANT'S OPPOSITION TO APPELLEE'S BRIEF

COMES NOW, Appellant (hereinafter "Mr. Orth"), seeking to oppose Appellee's contentions that Mr. Orth's claims lack merit and are "frivolous." Mr. Orth's Opening Brief and evidence submission from the record below are incorporated by this reference as if fully restated herein. ***Any and all emphasis*** employed herein may be construed to have been added.

Mr. Orth's opening brief (hereinafter "**Brief**") contains proof that Appellee's brief (hereinafter "**Reply**") is either 1) farce and folly, or 2) and overt act in a conspiracy against the rights of Mr. Orth to acquire, enjoy, and dispose of property in any legal way, and against his due process rights to be taxed by clear language and to assurances that the law has operated before he loses property or privacy under the guise of income taxation. Consider the lie to this Court that, "I.R.C. § 1401 imposes self employment income taxes on earnings "derived by an individual" I.R.C. § 1401, 1402(a), (b)." (**Reply** at top of p.20.). The law actually states:

> 26 USC § 1401 Rate of tax.
> (a) Old-age, survivors, and disability insurance.- In addition to other taxes, there shall be imposed for each taxable year, ***on the self-employment income*** of every individual, a tax equal to 12.4 percent of the amount of the self-employment income for such taxable year.
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> 26 CFR 1.1402(a)-2(a). Computations of net earnings from self-employment.-
> (a) General rule. . "... for the purpose of ascertaining his net earnings from self-employment, are to be determined by reference to the provisions of law and regulations applicable with respect to the taxes imposed by sections 1 and 3."

The law actually (in 26 USC ch.2) taxes only income and not self-employment earnings as Appellee stated, and this amount (taxable income) is determined by applying 26 USC ch.1 provisions which recognize as gross income only the "excess over the amount (if any) paid," the excess over the "value of any money or property paid" by Mr. Orth, only the "amount which remains after the adjusted basis has been restored to" Mr. Orth. (See **Brief** at ¶ 23 and authorities thereunder).

Appellee argues that Mr. Orth's issues have been waived by his having not raised them in Tax Court, but at the same time acquiesces that the arguments are illegal in Tax Court. Despite the intentional confrontational tone and the insolence dispensed by Mr. Orth in his USTC petition, that court did nothing to clarify or contradict the allegations in the petitions, that uncomfortable truths have been abolished by Tax Court, truths proven through the plain

language of **26 USC** §§ 1, 61(a)-(b), 83(a), 212, 879(a)(2), 1001, 1011, 1012, 1402(b), 3121(e), 3306(j), 6201, 6404(b), 6671(b), 7343, 7621, 7651(4)(A), 7655; **42 USC** § 411(b)(2); **Social Security Act** of 1935 § 211, Pub.L. 74-271, 49 Stat. 620 (August 14, 1935), now codified as 42 USC ch. 7; **1939 Internal Revenue Code** §§ 111, 112, 113, 3640, 3811; **26 CFR** 1.1-1, 1.83-3(e), (f), (g), 1.83-4(b)(2), 1.1001-1(a), 1.1011-1(a), 1.1012-1(a), 1.1401-1(a), 1.1402(a)-2(a), 1.1402(b)-1(d), 31.0-2(a)(1), 31.3121(e)-1(b), 301.6201-1(a), and 602.101.

Any and all claims by the Appellee are to be viewed as the claims of a party that argues successfully that Mr. Orth has no right to a clear explanation of the laws, that he's not entitled to know how to comply with the laws:

> "The Right to Be Informed.- Taxpayers have the right to know ***what they need to do to comply with the tax laws***. ***They are entitled to clear explanations of the laws*** and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes."

See URL visited 4/11/2018: https://www.irs.gov/Taxpayer-Bill-of-Rights. See also *Helvering v. Tex-Penn Oil Co.*, 300 US 481, 498 (1937) ("The taxpayers were entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies."). ***Compare***: *US v. Steele*, USDC Frankfurt, KY #3:16-cv-00095-GFVT Order doc.#81 filed March 27, 2018, dismissal of a counterclaim suing only for *what they need to do* and for *clear explanations* of those provisions.

> "The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the Federalist, No.78, from which we excerpt the following:
>
> > "The executive not only dispenses the honors, but holds the sword of the community. The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, ***has no influence*** over either the sword or the purse; ***no direction*** either of the strength or of the wealth of the society; and ***can take no active resolution whatever***. ***It may truly be said to have neither force nor will, but merely judgment***." [1]

What strikes the Appellant hardest is Appellee's belief that this Court is the place to commit such a contravention of the law. It's up to this Court to protect its own "integrity," and Appellee's perceptions and requests of this Court illustrate a belief that integrity has nothing to

[1] See *Evans v. Gore*, 253 U.S. 245, 249, 40 S.Ct. 550, 551 (1920).

do with these proceedings. Appellee's **Reply** pp.9-17 contain no mention whatsoever of controlling provisions, and all of it based on the presumption that Mr. Orth received gross income, but that's supposed to be calculated by the application of 26 USC §§ 83, 212, 1001, 1011, and 1012 and the regulations thereunder. (**Brief** at ¶¶19-33).

Appellee conspicuously fails *in toto* to even mention 26 USC §§ 212, 1001, 1011, and 1012 and the regulations thereunder when they govern the calculation of Mr. Orth's cost and gain or gross income. (*Id.*). This is a waiver of rights to argue against Mr. Orth, and it exposes in abundant clarity that the average individual cannot rightfully be expected to comply with a taxing scheme the Appellee itself refuses to explain and fails to explain when pressed. What is this Court to the Appellee that it simply omits from all arguments the provisions of focus and contention, those of fundamental and undeniable relevance? Is this Court the Appellee's personal assistant to that end or degree?

By virtue of this omission Mr. Orth has to be recognized as entitled to a favorable judgment regarding the operation of the provisions cited in ¶¶19-30 of his **Brief** in relation to all § 1401 and § 1 allegations of his receipt of "gross income" as defined by the provisions cited there. Requirements to file and penalties assessed for late or non-filing are mooted. Appellee's **Reply** is entirely a waste of this Court's resources as it relates to its pp.9-17.

> 26 USC § 6012 Persons required to make returns of income.-
> General rule.- Returns with respect to income taxes under subtitle A shall be made by the following:
> (1)(A) Every individual ***having for the taxable year gross income which equals or exceeds the exemption amount***, except that a return shall not be required of an individual -
>
> IRS' Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, Revenue Ruling 2007-19: "***Section 83 provides for the determination of the amount to be included in gross income*** and the timing of the inclusion ***when property is transferred to an employee or independent contractor in connection with the performance of services***."

Until such time as the law is proven to have operated, which due process requires, Appellee's allegations of receipt of "gross income" must each and all be viewed as derelictions resulting from a failure to apply 26 USC §§ 83, 212, 1001, 1011, and 1012 and the regulations thereunder. (See **Brief** at ¶¶19-30). Mr. Orth has gross income only when § 83(a) says so, and

not before. All "taxes," penalties, and interest arise from this violation of these controlling provisions.

Appellee's **Reply** at pp.17-19 charges that Mr. Orth has waived rights to argue issues not raised in Tax Court but acquiesces that the arguments are illegal in Tax Court, having been held repeatedly to be a violation of 26 USC § 6673. (See **Brief** at ¶¶3-6). Think of it, pressing for an exegesis of the statutes that explain how to tax the entire American workforce is an illegal act in Tax Court, and for Mr. Orth's preference to obey the law the Appellee now suggests he be barred from review. "To punish a person for doing what the law plainly permits is a due process violation of the most basic sort." (See *Bordenkircher v. Hayes*, 434 US 357, 363 (1978). *Accord*, citing *Bordenkircher*: *US v. Goodwin*, 457 US 368, 372 (1982); *US v. Segal, et al.*, 495 F.3d 826, 832 (CA7 2007); *US v. Osmani*, 20 F.3d 266, 269 (CA7 1994); *US v. Warda*, 285 F.3d 573, 580 (CA7 2002); *US v. Jarrett*, 447 F.3d 520, 525 (CA7 2006); *Corcoran v. Buss*, 551 F.3d 703, 710 (CA7 2008)). Appellee says that's not a fundamental error or miscarriage of justice in the face of authorities that say the opposite.

Tax Court's policies and declaration by prudential rule that legal arguments are illegal violates Mr. Orth's rights to due process, and clearly defeat the purpose for which Congress established that court. Mr. Orth's reserved issues are properly before this Court and should be responsibly decided.

Appellee's **Reply** p.20 contain another lie, a very plain one: "Taxpayer does not, and indeed cannot, deny that he is an individual subject to self employment and other income taxes." Mr. Orth does deny that § 1402(b), 3121(e), 3306(j), 42 USC § 411(b)(2), and § 211 of the SS Act of 1935 allow the application of 26 USC ch.2, 21, and 23 to him because those provisions expressly exclude, by definition of "citizen," any citizen of the United States.

Under the weight of the virtual orgy of statutory evidence of this constraint on SS statutory scope and application this Court is bound to prevent Appellee's attempt to obtain any of his property under 26 USC § 1401. Appellee offers no explanation of who it is who will never owe ch.2 tax but who may owe ch.1 taxes, where a mere regulation identifies the subject of the § 1 income tax.

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> § 1402(b) . . . ***An individual <u>who is not a citizen of the United States</u>*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual***.
>
> 26 CFR 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***<u>may be subject to the applicable</u> income tax provisions*** on such income, such nonresident alien individual ***<u>will not be subject</u> to the tax on self-employment income***, since any net earnings which he may have ... do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an individual <u>who is not a citizen of the United States</u> but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or . . . of Guam or American Samoa is not considered to be a nonresident alien individual***.

To say Americans are defined this way by Congress is ludicrous at best, and Appellee doesn't even mention 26 USC §§ 7651(4)(A) and 7655 which state as a matter of law that § 1401 and § 3101 taxes are "imposed in the Possessions," and are a procession of predecessor statute 1939 Internal Revenue Code § 3811. Appellee makes no reference whatsoever to these provisions also cited by Mr. Orth. (**Brief** at ¶¶7-11). Appellee has had over twenty-five years to do better than this.

Congress indeed *alluded* to "citizens of the United States" in several instances, in statutes cited by Mr. Orth as relevant to SS taxes altogether and specifically under 26 USC ch.2, and Congress obviously <u>excluded</u> said citizens from the scope of relevant income taxes. (See **Brief** at ¶¶7-11). Although acutely aware of the existence of such citizens, Congress has failed to implicate said citizens as subject of an income tax.

In addition, inasmuch as Mr. Orth simply cannot by law be <u>both</u> the "citizen" in 26 USC §§ 1402(b), 3121(e), or 3306(j), or in 42 USC § 411(b)(2) or the SS Act of 1935 § 211, <u>and</u> a citizen of the United States, it follows that Mr. Orth cannot be the subject of <u>both</u> taxing schemes (ch.1 § 1 tax, and SS taxes in ch.2, 21, 23). Indeed, <u>no statute</u> instructs that ch.2 § 1401 tax be added to the tax imposed by ch.1 § 1 (or § 3), but a regulation does:

> 26 CFR 1.1401.–1 Tax on self-employment income.-
>
> (a) "....This tax shall be levied, assessed, and collected as part of the income tax imposed by subtitle A of the Code and, ... will be included with the tax imposed by section 1 or 3 ..."

Inasmuch as no individual can be both of these citizens, as defined by 26 CFR 1.1-1 and statutes in the previous paragraph, 26 CFR 1.1401-1(a) is hereby challenged as a deviation from statute that never provides for this instruction that 26 USC ch. 1 and ch.2 taxes be imposed on the same individual's non-employee compensation.

> ""[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo,* 472 F.2d 720, 722 (CA5 1972). See *United States v. Wooten,* 688 F.2d 941, 950 (CA4 1982). Had Congress intended to restrict § 1963(a)(1) to an interest in an enterprise, it presumably would have done so expressly as it did in the immediately following subsection (a)(2). See *North Haven Board of Education v. Bell,* 456 U.S. 512, 521 (1982); *United States v. Naftalin,* 441 U.S. 768, 773-774 (1979). In the latter case, *id.,* at 773, the Court said: "The short answer is that Congress did not write the statute that way." We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship."

See *Russello v. US*, 464 US 16, 23 (1983).

> "In a RICO case recently decided, this Court observed: "In determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of `a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States v. Turkette,* 452 U.S. 576, 580 (1981), quoting from *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). See also *Dickerson v. New Banner Institute, Inc.,* 460 U.S. 103, 110 (1983); *Lewis v. United States,* 445 U.S. 55, 60 (1980)."

*Id.* at 20.

Had Congress intended citizens of the United States to be the subject of an income tax it would have named them in kind with others clearly not possessive of such citizenship. Appellee cites no cases where controlling provisions §§ 83, 212, 1001, 1011, and 1012 and the regulations thereunder were even in evidence and asks this Court to accept them. Mr. Orth has never claimed that "wages are not income"; not once. (See **Reply** at p.20 bottom). He has claimed that the Appellee has deprived him of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012 and the regulations thereunder.

Appellee at **Reply** p.20 says § 1(a) through (d) imposes a tax on "every" married and single "individual" and "head of household" without reference to the core challenge which is 1) 26 USC § 1 <u>does not</u> mention any citizenship and 26 CFR 1.1-1 <u>does</u>, so the regulation

is void at least that extent, and 2) upon the promulgation of said regulation did the Appellee (the IRS) have authority it lacked before such promulgation? (See *FDA v. Brown & Williamson Tobacco Co.*, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 US 120 (2000)). The correct answer to the 1.1-1 challenge is actually quite astray from Appellee's reasoning in this action:

> "ORDER DENYING MOTION TO DISMISS -
>
> This matter comes before the Court on the motion of defendant Robert Arant to dismiss for failure to state a claim upon which relief may be granted. (Dkt. #41). Arant, who is proceeding *pro se*, argues that the United States of America (the "United States") has no statutory authority to act against him. See, *e.g.*, Motion at pg.8 ("The Secretary of the Treasury has imposed a tax on the Defendant through 26 CFR 1.1-1(c), but has done so without the authority to do so, the authority to lay income tax[es] having been reserved to Congress and Congress alone"). (**Fn.1**).
>
> "However, "[t]he IRS is given the authority to assess taxes." *Law Offices of Jonathan A. Stein v. Cadle Co.*, 250 F.3d 716, 720 (9th Cir. 2001) (citing 26 USC § 6201-6204); see also *McLaughlin v. IRS*, 832 F.2d 986-87 (7th Cir. 1987) (per curiam) ("Tax protestors, those who persist in pressing losing arguments in an attempt to challenge the legitimacy of the federal income tax, are a thorn in the side of the federal judiciary"); see generally *United States v. Fior D'Italia*, 536 US 238, 122 S.Ct. 2117, 153 L.Ed.2d 280 (2002) (discussing the IRS' authority). Arant may not agree with that authority, but nevertheless, it exists. Accordingly, defendant's motion to dismiss is DENIED."
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> **Footnote 1**. The government has responded to the motion with a single sentence, noting that the motion "is a frivolous pleading to which no further response from the United States is required." response at p.1. In the future, the government should look beyond the frivolous nature of Arant's filings and respond substantively."

See *US v. Arant*, 102 A.F.T.R.2d (RIA) 5633 (2008) (2008 U.S. Dist. LEXIS 12598) (#C-07-0509-RSL, W.D. of WA at Seattle, then Chief Judge Robert S. Lasnik's Order dated Feb. 5, 2008).

So, Mr. Orth's claim is void in one instance it's because of case law regarding assessment authority (*Arant*), but in this case it's because of "individual," "head of household," and "married individual" in the text of § 1. This Court's already stated that regulation identifies the subject of the § 1 tax. Will Appellee's requests in this action overturn *Vallone*? How can the average individual determine that those terms govern instead of this Court's ruling in *Vallone*?

Appellee at p.20-21 of **Reply** argues that Mr. Orth should be held to the decisions obtained by others who failed to argue §§ 83, 212, 1001, 1011, and 1012 and the regulations thereunder, as one must. (See **Brief** at ¶¶19-30). Gross income isn't calculated under § 61(a) which begins with "Except as otherwise provided" and is followed by § 61(b) that instructs that one apply § 83 to calculate § 61(a) gross income. Mr. Orth contends that only the excess over the value of any money or property paid for his compensation is to be included in gross income, and that to demand more than that is a violation of the law. (See **Brief** at ¶¶19-30, ***compare*** 18 USC § 872 Extortion by officers or employees of the United States).

Below, the *Talmage* exclusion was the foundation of Appellee's argument concerning § 83, (See **Brief** at ¶¶20-23), but now Appellee suggest an altogether different escape route as purported contrary authority when it cites 26 CFR 1.83-3(e) while proposing that § 83 applies to things "other than money." (See **Reply** at p.21). Does this Court hold that § 83 does not apply to all property transferred in connection with the performance of services, and how would it justify departing from precedent on other circuits?

> "***Respondent contends that the words "any person" in section 83(a) encompass independent contractors as well as employees***. ***We agree with Respondent***. . . . We reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, ***the language of the section covers the transfer of any property transferred in connection with the performance of services*** "to *any person* other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that ***Congress was aware that the statute's coverage extended beyond restricted stock plans for employees***. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. ***The regulations state that that section 83 applies to employees and independent contractors*** (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances, ***these regulations are not "unreasonably and plainly inconsistent with the revenue statutes." Consequently, they are sustained***. (cites omitted)"

See *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).

Appellee at p.22 of **Reply** argues that Mr. Orth contends that § 1 is void for vagueness; not true. Mr. Orth points to the Appellee's utter inability (intentional evasion) to discuss the plain language of controlling provisions or the many provisions that clearly expose SS as a tax "citizens of the United States" have never owed. Mr. Orth points to Appellee's different replies to the same briefed issues and the epithet of "tax protester"

brandished about against anyone who dares to contradict the Internal Revenue Service. The taxing scheme at 26 USC is governed by evasion, coercion, and threats of monetary pains for anyone who seeks this:

> "The Right to Be Informed.- Taxpayers have the ***right to know what they need to do to comply with the tax laws***. ***They are entitled to clear explanations of the laws*** and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes."

See URL visited 4/11/2018: https://www.irs.gov/Taxpayer-Bill-of-Rights .

When the taxman can't even explain where authority comes from and has to avoid entire blocks of controlling provisions to escape a challenge that he's stealing, *void for vagueness* is the least of it. Under such circumstance Mr. Orth's rights to due process are obliterated. (See **Brief** at ¶¶34-43).

Appellee at p.22 of **Reply** asks this Court to believe that the § 7345 suspension of US Passport privileges is alright because Tax Court will review the suspension under § 7345(e), despite all of Mr. Orth's proof that arguments concerning governing provisions are illegal there. Really? Appellee cannot even mention on this level, in this Court, a host of controlling provisions and still calls America's judiciary an *opportunity for review*; really? Mr. Orth just tried that; America has no courts. Does Appellee presume to take up more of this Court's resources by forcing Mr. Orth again into court where he'll receive no review and will therefore be again forced to trouble this Court when a plain denial of access to the law by the Appellee is the sole contributing factor necessitating such efforts? Mr. Orth is entitled to review <u>now</u>, not later. This curse the Appellee wishes upon every American is truly vile when it can't deny keeping the law itself off-limits. In the eyes of the Appellee this Court is precisely the vehicle for all of that.

If Mr. Orth does not appeal this Court's ruling, it triggers the sanctions authorized by 26 USC § 7345, while whether or not the law imposes a tax liability upon remains a secret under threat of enormous sanctions. This Court has already ruled that regulation identifies the subject of the § 1 income tax. To include in gross income the value of Mr. Orth's personal services the Court and the Appellee have to set aside all of the precedent regarding "any" and "any property," including five victories of the Appellee arguing that those terms are all inclusive, when setting

about apply controlling provisions that use those terms. (See **Brief** at ¶¶ 23-27). To allow by evasion a sanction such as the suspension of such a substantial privilege constitutes a clear violation of rights to procedural due process.

In sum, Appellee still cannot discuss controlling provisions when Mr. Orth stands to lose how much? Who bears the blame for having weaponized the IRS and the judicial system against the American this way? Where are the individual's rights under the void for vagueness when the law is off limits? Where is the integrity in an unfavorable ruling? How much of a mock is this Court willing to let the Appellee's counsel make of it? Appellee has contributed nothing that would help this Court understand how Mr. Orth is mistaken.

## CONCLUSION

Mr. Orth is entirely unable to compute his liabilities under 26 USC because an exegesis of controlling provisions already argued is unavailable from the IRS, from Tax Court, from Congress, the White House, US Dist. Court in countless venues, in circuit courts; how much is too much? In this action Appellee never even mentioned **26 USC** §§ 1, 61(b), 212, 1001, 1011, 1012, 3121(e), 3306(j), 7651(4)(A), 7655; **42 USC** § 411(b)(2); **Social Security Act** of 1935 § 211, Pub.L. 74-271, 49 Stat. 620 (August 14, 1935), now codified as 42 USC ch. 7; **1939 Internal Revenue Code** §§ 111, 112, 113, 3811; **26 CFR** 1.1-1, 1.83-4(b)(2), 1.1001-1(a), 1.1011-1(a), 1.1012-1(a), 1.1401-1(a), 1.1402(a)-2(a), 1.1402(b)-1(d), 31.0-2(a)(1), and 31.3121(e)-1(b), but these are key to Mr. Orth's claims.

> 26 USC § 7803 Commissioner of Internal Revenue; other officials.
> (a) Commissioner of Internal Revenue.-
> (3) Execution of duties in accord with taxpayer rights.- ***In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including -***
> (A) ***the right to be informed***,
> (B) ***the right to quality service***,
> (C) ***the right to pay no more than the correct amount of tax***,
> (D) ***the right to challenge the position of the Internal Revenue Service and be heard***,
> (E) ***the right to appeal a decision of the Internal Revenue Service in an independent forum***,
> (F) the right to finality,
> (G) ***the right to privacy***,

(H) the right to confidentiality,
(I) the right to retain representation, and
(J) ***the right to a fair and just tax system***.

"Quality service" is - Appellee **1)** promises to provide clear explanations of the laws and information necessary for Appellant to comply with the tax laws, **2)** promises that he "is entitled to know the basis of law and fact upon which the Comm'r sought to sustain the deficiencies," **3)** tells the American public that their services are their cost annually since as early as 1993, **4)** has been challenged with these statutory claims since as early as 1994, **5)** says that "Section 83 provides for the determination of the amount to be included in gross income and the timing of the inclusion when property is transferred to an employee or independent contractor in connection with the performance of services," **6)** has placed none of these controlling provisions or these claims on the Appellee's "frivolous arguments list," **7)** does not duly instruct that Mr. Orth to consult said list, **8)** cannot even mention controlling provisions in its reply despite having had so much time to formulate a reason why Mr. Orth is incorrect, and **9)** cannot provide an explanation of controlling provisions despite its obligation to know its governing provisions and to apply the realistically. This means Appellee doesn't even have to train its officers, agents and employees how to comply with the law, and that the average individual has no access to the law in federal courts; taxation without representation.

An unfavorable decision requires that this Court ignore Appellee's five victories in the Supreme Court regarding the terms "any" or "any property" and rule that the executive can, for any reason it can contrive, identify an item the law classifies as an "amount paid" or cost and simply mandate that said item is by such executive fiat now *profit* or gross income. That's the imposition of an income tax by the executive in violation of the 16th Amdt. which authorizes only Congress to lay an income tax. Appellee never comes to approach this challenge from Mr. Orth. (See **Brief** at ¶¶28-33).

Appellee's refusal to provide clear explanations forces Mr. Orth to speculate as to the meaning of 26 USC §§ 7201 *et seq.*, which violates due process and makes a mock of Mr. Orth's rights to access the law, *aka*, taxation by representation. [Play] fast and loose until somebody figures out which provisions to argue and how to do it, then switch to evasion and diatribe and the court will do the rest. A record spanning twenty-five years reveals this substance that erodes every family and infects every court. How far everyone must run to uphold the Appellee's

scheme is precisely the measure of the rights of the individual who has to have known of such stretches and roadblocks to certain provisions to stay out from under the bus; this is not due process. Mr. Orth is entitled to the invalidation of the Appellee's [determination] of liability of each and all categories and types of tax, penalties and interest, both as a matter of law and as a mater of due process.

Respectfully,

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Robert E. Orth

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