

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ROBERT E. ORTH,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

**ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT**

ANSWERING BRIEF FOR THE APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The Commissioner respectfully advises this Court that no oral argument is necessary, as this appeal is frivolous.

**IN THE UNITED STATES COURT OF APPEALS
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No. 17-3348

ROBERT E. ORTH,

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v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

**ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT**

JURISDICTIONAL STATEMENT

The jurisdictional statement in appellant's brief is incomplete.

The Commissioner of Internal Revenue provides the following correct and complete jurisdictional statement.

A. Tax Court jurisdiction

On May 16, 2016, the Commissioner of Internal Revenue mailed to Robert Edward Orth (taxpayer) a notice of deficiency, indicating the Commissioner's determination that taxpayer was liable for unpaid 2012

and 2013 taxes and penalties. (Doc. 4, Exs. 1-2.¹) On August 12, 2016, within ninety days of the issuance of the notice of deficiency, taxpayer timely mailed a petition to the Tax Court. (Doc. 1.) *See Internal Revenue Code (I.R.C.) (26 U.S.C.) § 7502.* The Tax Court had jurisdiction pursuant to I.R.C. §§ 6213(a), 6214 and 7442.

B. Appellate jurisdiction

The Tax Court entered an order and decision granting summary judgment to the Commissioner on October 12, 2017. (Doc. 15.) This decision is a final determination that disposes of all claims of all parties. On November 13, 2017, within 90 days of the entry of decision, taxpayer filed a timely notice of appeal to this Court. (Doc. 16.) *See I.R.C. § 7483; Fed. R. App. P. 13(a)(1).* This Court has jurisdiction to review the decision of the Tax Court under I.R.C. § 7482(a)(1).

STATEMENT OF THE ISSUE

Whether the Tax Court correctly sustained the Commissioner's determinations of deficiencies and additions to tax, where taxpayer

¹ "Doc." refers to the documents as numbered by the Clerk of the Tax Court in Case No. 18049-16. "Br." refers to taxpayer's opening brief as paginated by Seventh Circuit CM/ECF. (Taxpayer's brief was submitted in two separate volumes with nonconsecutive pagination.)

disputed no material facts and “reserved” his legal arguments for appeal anticipating that they would be deemed frivolous and sanctionable by the Tax Court.

STATEMENT OF THE CASE

A. Nature of the dispute and summary of the proceedings

Taxpayer received non-employee compensation in 2012 and 2013, and did not file a tax return or pay income tax for either year. The Commissioner determined tax deficiencies in the amounts of \$31,176 for 2012, and \$40,391 for 2013. (Doc. 10, Exs. D-E.) The Commissioner also imposed (1) penalties for failing to file a tax return under I.R.C. § 6651(a)(1) in the amounts of \$7,014 for 2012, and \$9,087 for 2013, (2) penalties for failure to pay tax under I.R.C. § 6651(a)(2) in the amounts of \$5,455 for 2012, and \$4,644 for 2013, and (3) penalties for failure to make estimated tax payments under I.R.C. § 6654(a) in the amounts of \$558 for 2012, and \$725 for 2013. (*Id.*) Taxpayer challenged these determinations in the Tax Court. (Doc. 1.)

In the Tax Court, the Commissioner conceded the penalty for failure to make estimated tax payments for 2012. (Doc. 9 at 2, n.1.) The Commissioner moved for summary judgment on the remaining

issues, arguing that there was no dispute that taxpayer received non-employee compensation and failed to file returns or pay income tax for the years at issue. (Doc. 9.) Taxpayer did not disagree. (Doc. 14.) The Tax Court (Judge Ronald L. Buch) accordingly granted summary judgment in favor of the Commissioner. (Doc. 15.) Taxpayer now appeals. (Doc. 16.)

B. Statement of the facts

1. The Commissioner's determinations

Taxpayer did not file federal income tax returns or pay federal income taxes for the tax years 2012 and 2013. (Doc. 10, Ex. A.) Based on reported Forms 1099-MISC, the Commissioner determined that taxpayer received, and failed to report, non-employee compensation of \$105,600 from one payor in 2012, and a total of \$124,650 from two payors in 2013. (Doc. 9.) Using this information, the IRS prepared returns pursuant to I.R.C. § 6020(b) for taxpayer, calculating his tax for each year. (Doc. 8.) The IRS also imposed penalties based on taxpayer's failure to file required returns or pay income tax, and based on his failure to make estimated payments of self-employment tax. (Doc. 8.)

The Commissioner issued taxpayer a notice of deficiency for each tax year, 2012 and 2013, pursuant to I.R.C. § 6212. (Doc. 1, Ex. A.) The notices indicated the Commissioner's determination that taxpayer had received unreported non-employee compensation for 2012 and 2013, and, as a result, that taxpayer owed tax on that income as well as additions to tax. (*Id.*)

2. Proceedings in the Tax Court

Taxpayer timely filed a petition with the Tax Court, seeking the review and dismissal of the Commissioner's determinations. (Doc. 1.) Taxpayer's petition nominally challenged the Commissioner's determinations that taxpayer failed to file, failed to pay, and failed to make estimated tax payments on non-employee compensation for tax years 2012 and 2013. (*Id.*) But taxpayer did not dispute that he received non-employee compensation in 2012 and 2013. (Doc. 1; Doc. 8 at 4.) Nor did taxpayer allege that he filed any income tax returns or made any payments of tax for those years.

Instead, in his petition, taxpayer sought to "reserve for appeal" several frivolous arguments as to why he should not be taxed in the first instance. (See Doc. 1; Doc. 8 at 4; Doc. 15.) Taxpayer refused to

present these arguments to the Tax Court, his petition averred, in order to avoid incurring penalties under I.R.C. § 6673(a) for making frivolous arguments. (Doc. 1.)

On August 31, 2017, the Commissioner filed a motion for summary judgment. (Doc. 8.) The Commissioner presented evidence that taxpayer had received non-employee compensation and failed to file returns or make payments for the years at issue, and stated that taxpayer did not dispute any of these material facts. (Docs. 8, 9, 10.) As confirmation, taxpayer confined his opposition to arguments he sought to “reserve for appeal.” (Doc. 14.)

On October 12, 2017, the Tax Court issued an order and decision, granting summary judgment in favor of the Commissioner. (Doc. 15.) The Tax Court stated that taxpayer “does not dispute any facts set forth in the Commissioner’s motion,” or “the fact that he did not timely file his income tax returns, or that he failed to make payments toward his 2012 and 2013 tax liability.” (*Id.* at 2.) The court rejected, as frivolous, taxpayer’s “reserved” arguments: that I.R.C. § 83 excluded compensation for services from income; that U.S. citizens were not subject to self-employment tax; and that deficiency proceedings were

subject to the Administrative Procedures Act. (*Id.* at 2-3.) The court noted that taxpayer's arguments "appear to be cobbled together, verbatim, from [a] tax-protester [w]ebsite." (*Id.* at 3 n.6.) The court nonetheless declined to sanction taxpayer for making frivolous arguments, and entered its final decision in the amounts determined by the Commissioner. (*Id.* at 4.)

SUMMARY OF ARGUMENT

The Tax Court correctly sustained the Commissioner's determinations of taxes and additions to tax in this deficiency proceeding. Those determinations are presumptively correct, and taxpayer bears the burden to demonstrate any error. Taxpayer did not dispute that he received non-employee compensation, failed to file required tax returns, and made no payments of tax for 2012 and 2013. Instead, he sought only to advance numerous tax-protester arguments, cut and pasted from the internet, that the court correctly recognized as frivolous. Because he disputed none of the facts on which the Commissioner's determinations were based, taxpayer has failed to rebut the presumption of correctness accorded those determinations.

Taxpayer now seeks to present, for the first time before this Court, “new issues on appeal” that taxpayer himself alleges would have exposed him to sanctions in the Tax Court. These arguments are not properly before this Court and, at all events, lack merit.

The order and decision of the Tax Court is correct and should be affirmed.

ARGUMENT

The Tax Court properly sustained the Commissioner’s determinations of deficiencies and additions to tax, based on taxpayer’s failure to report non-employee compensation he received in 2012 and 2013

Standard of review

This Court reviews decisions of the Tax Court “in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury.” I.R.C. § 7482(a)(1). The Tax Court’s grant of summary judgment is reviewed *de novo*. *See Musa v. Commissioner*, 854 F.3d 934, 938 (7th Cir. 2017); *Gyorgy v. Commissioner*, 779 F.3d 466, 480 (7th Cir. 2015); *Kindred v. Commissioner*, 454 F.3d 688, 693-94 (7th Cir. 2006).

A. Introduction: A taxpayer's obligation to file a tax return and pay income tax

Section 1 of the Internal Revenue Code imposes a tax on the “taxable income” of all individuals who, like taxpayer, are citizens or residents of the United States. *See* Treas. Reg. (26 C.F.R.) § 1.1-1(a)(1). I.R.C. § 63 defines “taxable income” as gross income less allowable deductions. I.R.C. § 61(a), in turn, defines “gross income” as “all income from whatever source derived,” including, *inter alia*, “[c]ompensation for services.” I.R.C. § 61(a)(1). The Supreme Court has recognized that Congress intended, through I.R.C. § 61(a) and its statutory precursors, to exert “the full measure of its taxing power,” *Helvering v. Clifford*, 309 U.S. 331, 334 (1940), and to bring within the definition of income any “accessio[n] to wealth.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

Taxpayers are required to file returns and keep records according to the requirements of the Secretary of the Treasury or his delegate. I.R.C. §§ 6001, 6011(a); Treas. Reg. §§ 1.6001-1(b), 1.6011-1(a). I.R.C. § 6012(a) provides in pertinent part that “[r]eturns with respect to income taxes . . . shall be made” by “[e]very individual having for the taxable year gross income which equals or exceeds the exemption

amount,” with certain exceptions not applicable here. I.R.C. § 6012(a). The term “exemption amount” is defined in I.R.C. § 151(d) and, during the years at issue, did not exceed \$2,000. I.R.C. §§ 151(d), 6012(a)(1)(D)(ii). Returns generally must be filed by April 15 of the year following the close of the taxable year. I.R.C. § 6072(a); *see also* Treas. Reg. § 1.6012-1 (prescribing the form of the return).

The Internal Revenue Code authorizes the IRS to make inquiries, determinations, and assessments of all taxes imposed thereunder and to collect such taxes. *See* I.R.C. §§ 6201, 6301. Included in this grant of authority is the authority to determine tax deficiencies. I.R.C. §§ 6211(a), 6212(a). When the IRS determines a deficiency, it generally must send, as it did here, a statutory notice of deficiency by certified or registered mail to the taxpayer at his last known address before it assesses or collects the tax. I.R.C. §§ 6212(a), (b). The IRS’s deficiency determination is presumed to be correct, and the taxpayer bears the burden of showing otherwise. *See, e.g., Kikalos v. Commissioner*, 434 F.3d 977, 982 (7th Cir. 2006); *Reynolds v. Commissioner*, 296 F.3d 607, 612 (7th Cir. 2002).

The Internal Revenue Code also authorizes the imposition of penalties or additions to tax if a taxpayer does not comply with his statutory obligations. I.R.C. § 7491(c) assigns the IRS the burden of production with respect to a taxpayer's liability for a penalty. The legislative history of I.R.C. § 7491(c) makes clear that, "in any court proceeding, the Secretary must initially come forward with evidence that it is appropriate to apply a particular penalty to the taxpayer before the court can impose the penalty," and "if the taxpayer believes that, because of reasonable cause, substantial authority, or a similar provision, it is inappropriate to impose the penalty, it is the taxpayer's responsibility (and not the Secretary's obligation) to raise those issues."

H. R. Conf. Rep. No. 105-599, at 241, *reprinted in* 1998-3 C.B. 747, 995.

B. The Tax Court properly sustained the deficiencies and additions to the tax determined by the Commissioner

The Commissioner submitted evidence that taxpayer had received non-employee compensation, failed to file timely returns, failed to pay the tax due, and failed to pay estimated tax due. (Doc. 10.) As discussed, taxpayer's deficiencies were entitled to the presumption of correctness, and the evidence submitted by the Commissioner met his

burden of production with respect to the penalties. Taxpayer did not dispute the Commissioner's evidence, or attempt to show that he acted with reasonable cause or met another exception to the additions to tax. Accordingly, the Tax Court properly upheld the Commissioner's determinations of taxes owed and the imposition of additions to tax under I.R.C. §§ 6651(a)(1) and (a)(2), and 6654(a).

1. Taxpayer owes self-employment tax

The Self-Employment Contributions Act, codified at Chapter 2, sections 1401 - 1403 of the Internal Revenue Code, imposes a percentage tax on the annual self-employment income of every individual. I.R.C. § 1401. "Self-employment income" is defined as the "net earnings from self-employment derived by an individual . . . during any taxable year." I.R.C. § 1402(b). "[N]et earnings from self-employment" is defined as "gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business." I.R.C. § 1402(a); *see* Treas. Reg. § 1.1402(a)-1. "The self-employment tax provisions are broadly construed to favor treatment of income as earnings from self-employment." *Peterson v. Commissioner*,

827 F.3d 968, 986 (11th Cir. 2016), quoting *Bot v. Commissioner*, 353 F.3d 595, 599 (8th Cir. 2003).

Here, in the tax years at issue, taxpayer performed services in exchange for payments of non-employee compensation. (Doc. 10, Ex. B-C.) The Commissioner characterized these payments as self-employment income. (*Id.*) Taxpayer does not dispute that he received these payments, nor does he challenge their characterization as self-employment income. Accordingly, as the Tax Court held, taxpayer was liable for self-employment tax as determined by the Commissioner.

2. Taxpayer owes penalties for failure to file a return and failure to pay the tax due

I.R.C. § 6651(a)(1) imposes an addition to tax in case of a failure to file a required return by the date it is due. The amount of the addition is 5% of the amount of tax required to be shown on the return (reduced by the amount of tax paid by the due date) per month, up to a maximum of 25%. I.R.C. §§ 6651(a)(1), (b)(1). I.R.C. § 6651(a)(2) provides that if a taxpayer fails to pay tax by the date it is due, there shall be added to the tax one-half of one percent of the amount of the tax for each month the tax remains unpaid, not to exceed 25%, unless such failure is shown

to be due to reasonable cause and not to willful neglect. I.R.C.

§ 6651(a)(2).

Where a taxpayer has failed to file a required return or otherwise determine his own tax, the amount of the addition to tax under § 6651(a)(2) may be computed based on the Commissioner's determination of tax pursuant to I.R.C. § 6020(b). I.R.C. § 6651(g)(2); *see also* I.R.C. § 6020(b)(2) (return prepared by Commissioner "shall be *prima facie* good and sufficient for all legal purposes"). I.R.C. § 6020(b) provides that, if a taxpayer fails to file a return, the Commissioner "shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." The Tax Court has held that a § 6020(b) return "must be subscribed, it must contain sufficient information from which to compute the taxpayer's tax liability, and the return form and any attachments must purport to be a return." *Spurlock v. Commissioner*, 85 T.C.M. (CCH) 1236, 1244 (2003); *see also* Treas. Reg. § 301.6020-1(b)(1); *Mooney v. Commissioner*, 101 T.C.M. (CCH) 1153 (2011).

Here, the Commissioner's Forms 3050 ("Certification of Lack of Record") in the record demonstrate, and taxpayer does not dispute, that

taxpayer failed to file federal income tax returns for 2012 and 2013.

(Doc. 10, Ex. A.) *See Wilhelm v. United States*, 988 F.2d 131 (Fed. Cir. 1993) (Form 3050 reliably establishes absence of required filing); *McHaney v. Commissioner*, 103 T.C.M. (CCH) 1663 (2012) (Form 3050 fulfills Commissioner’s burden of production). Taxpayer’s tax liabilities for those years are reflected in the § 6020(b) return forms prepared by the Commissioner. (Doc. 10, Ex. B, C.) These forms, subscribed as returns by the Commissioner, are sufficient to compute taxpayer’s tax deficiencies and additions to tax for 2012 and 2013.² Taxpayer does not suggest otherwise, nor does he allege any error in the Commissioner’s computations.

² These documents contain taxpayer’s name, address, and social security number, and sufficient information from which to compute his tax liabilities. Each tax year includes a Form 13496 (“IRS Section 6020(b) Certification”), a Form 4549 (“Income Tax Examination Changes”), and a Form 886-A (“Explanation of Items”). The certification is subscribed, and expressly states that it and the attached documents “shall be treated as the return filed by the taxpayer for purposes of determining the amount of the additions to tax under paragraphs (2) and (3) of section 6651(a).” (Doc. 10, Ex. B, C.) The Tax Court has consistently considered such documents sufficient for purposes of §§ 6020(b) and 6651(a)(2). *See, e.g., Gleason v. Commissioner*, 101 T.C.M. (CCH) 1743 (2011); *Evans v. Commissioner*, 99 T.C.M. (CCH) 1245 (2010); *Simmons v. Commissioner*, 98 T.C.M. (CCH) 556 (2009).

These record documents demonstrate, and taxpayer does not dispute, that taxpayer made no payments of tax for the years at issue. (Doc. 10, Ex. F, G.) Nor has taxpayer asserted any reasonable cause for his failure to pay tax. *See* Treas. Reg. § 301.6651-1(c). Accordingly, as the Tax Court held, taxpayer was liable for additions to tax under § 6651(a) as determined by the Commissioner.

3. Taxpayer owes a penalty for failure to make payments of estimated tax

I.R.C. § 6654(a) provides that, if an individual taxpayer underpays estimated self-employment tax, there shall be added to the tax for the year an amount determined by applying the underpayment rate established under I.R.C. § 6621 to the amount of the underpayment for the period of the underpayment. A taxpayer is required to make quarterly installments of 25% of the “required annual payment.” I.R.C. § 6654(c), (d)(1)(A). The “required annual payment” is defined as “the lesser of (i) 90 percent of the tax shown on the [individual’s] return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or (ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.” I.R.C. § 6654(d)(1)(B).

Taxpayer filed no return for 2012. (Doc. 10, Ex. A.) Thus, taxpayer was required to make estimated tax payments equal to 90 percent of the tax he owed for 2013. I.R.C. § 6654(d)(1)(B)(i). Taxpayer did not make estimated payments, and he does not allege otherwise. (Doc. 10, Ex. F-G.) Accordingly, as the Tax Court held, taxpayer was liable for the addition to tax under I.R.C. § 6654(a) in 2013 as determined by the Commissioner.

C. Taxpayer has waived the arguments he “reserved for appeal” in the Tax Court

In the Tax Court, taxpayer offered no rebuttal to the Commissioner’s determinations that he had received unreported non-employee compensation, or that he owed taxes and penalties as a result. Instead, he “only offer[ed] arguments as to why he should not be taxed.” (Doc. 15 at 1.) He did not submit those arguments for decision, however, instead characterizing them in his petition as “Reservation of Claims for Appeal.” (Doc. 1 at 5.) In his summary judgment briefing, taxpayer doubled down on this litigation strategy, insisting that he “would never ask [the Tax Court] to look at the law; he’s not stupid,” and that the issues he had “preserved for appeal” were not being “presented in the Petition for review, in Tax Court.” (Doc. 14 at 2.)

Taxpayer's brief on appeal reiterates that he "seeks review of issues not raised below due to the lower court's record of imposing [I.R.C.] § 6673 sanctions" on those who advance tax-protester arguments. (Br. 5.) But because taxpayer refused to advance those arguments in the Tax Court, he has waived the right to do so on appeal.

Taxpayer contends that he may make arguments for the first time on appeal to this Court if the issues that he raises are purely legal or involve fundamental errors or miscarriages of justice. (Br. 5-7.) But he does not – and cannot – point to any error or injustice. And it is well settled that "a party opposing a summary judgment motion must inform the trial judge of the reasons, legal or factual, why summary judgment should not be entered." *Reklau v. Merchants Nat'l Corp.*, 808 F.2d 628, 629 n.4 (7th Cir. 1986) (*quoting Liberles v. County of Cook*, 709 F.2d 1122 (7th Cir. 1983); *see also Oates v. Discovery Zone*, 116 F.3d 1161, 1168 (7th Cir. 1997) (citation and internal quotations omitted) (claim not properly before the appellate court because "it is axiomatic that arguments not raised below are waived on appeal")); *Cooper v. Lane*, 969 F.2d 368, 371 (7th Cir. 1992) (collecting cases). The general rule that a party cannot raise an argument for the first time on appeal is subject to

exception “in exceptional cases” where “justice demands.” *Stern v. United States Gypsum, Inc.*, 547 F.2d 1329, 1333 (7th Cir. 1977). This case, however, plainly does not meet that standard.

D. To the extent taxpayer’s arguments on appeal are not waived, they are without merit

Taxpayer’s challenge to the Commissioner’s deficiency determinations consists entirely of tax-defier arguments. Taxpayer argues, first, that United States citizens are not subject to self-employment tax or income tax. Second, he essentially argues that wages are not income. Third, he contends that I.R.C. § 1, imposing the income tax at the rates set forth therein, is void for vagueness. Finally, he objects to the Secretary’s power to revoke or deny passports for seriously delinquent taxpayers under I.R.C. § 7345. These arguments are frivolous and patently lack merit.

Taxpayer first contends that United States citizens are not subject to taxes on income. He argues that he is exempt from self-employment taxes in particular, because those taxes are imposed only on nonresident aliens (Br. 32-34), and that he is exempt from income tax in general, because the term “citizen” does not appear in I.R.C. § 1. (Br. 34-37.) Neither contention is correct.

I.R.C. § 1401 imposes self-employment income tax on earnings “derived by an individual” from trade or business activity “carried on by such individual.” I.R.C. § 1401, 1402(a), (b). Similarly, sections 1(a) through (d) of the Code impose income tax on “every” married and single “individual” and “head of a household” (also defined as an “individual” (I.R.C. § 2(b))).

Taxpayer does not, and indeed cannot, deny that he is an individual subject to self-employment and other income tax. Treas. Reg. § 1.1-1 reinforces this point, stating that “Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States.” This Court, too, has repeatedly made it clear that United States citizens are subject to the federal income tax. *See United States v. Raymond*, 228 F.3d 804, 812 (7th Cir. 2000); *United States v. Hilgefond*, 7 F.3d 1340, 1342 (7th Cir. 1993); *United States v. Sloan*, 939 F.2d 499, 501 (7th Cir. 1991).

Taxpayer’s second contention, based on I.R.C. § 83 (Br. 37-49), is a variation of the shopworn, tax-defier argument that wages are not income. I.R.C. § 61(a) defines “gross income” as “all income from whatever source derived,” including “[c]ompensation for services.”

I.R.C. § 61(a)(1). I.R.C. § 83 provides rules for the inclusion in income of real or personal property (other than money) transferred to a taxpayer in connection with his performance of services as an employee or independent contractor. *See also* Treas. Reg. §§ 1.83-1(a)(1), 1.83-3(e). In a nutshell, a taxpayer must include in gross income the fair market value of the property received minus the amount paid therefor in money or other property. I.R.C. § 83(a); Treas. Reg. § 1.83-3(g).

Taxpayer's argument – that he may deduct the value of his labor from his compensation, leaving no net taxable income – repeatedly has been rejected as frivolous by this and other courts. *See, e.g., United States v. Cooper*, 170 F.3d 691, 691 (7th Cir. 1999) (referring to the argument that “wages are not income” as “frivolous squared” due to the countless times courts have rejected it); *Coleman v. Commissioner*, 791 F.2d 68, 70 (7th Cir. 1986) (rejecting argument that wages are not income); *Kile v. Commissioner*, 739 F.2d 265, 267 (7th Cir. 1984) (finding claim that wages are not taxable income to be frivolous); *United States v. Koliboski*, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984) (declaring that “WAGES ARE INCOME”) (emphasis in original).

Third, taxpayer contends that it follows from his construction of I.R.C. § 83 that I.R.C. § 1, imposing the income tax, is void for vagueness. (Br. 20-25.) A statutory scheme is unconstitutionally vague when it is so vague or indefinite that it really is not a rule or standard at all or when a person of ordinary intelligence cannot understand what the scheme requires. *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 835 (7th Cir. 2014). As explained above, taxpayer's construction of I.R.C. § 83 is frivolous, which negates his argument that the income tax is vague to any degree.

Taxpayer's final argument, concerning the Secretary's power to revoke or deny passports of seriously delinquent taxpayers pursuant to I.R.C. § 7345 (Br. 25-28), is derivative of his first three contentions. It is therefore equally erroneous. It is also entirely speculative. Before a passport can be so revoked or denied, the IRS must certify the existence of a "seriously delinquent tax debt" and send notice of the certification to the taxpayer. I.R.C. § 7345(a), (d). A taxpayer who receives this certification can challenge it in the Tax Court or in a district court pursuant to I.R.C. § 7345(e). But there is no evidence of any such certification in the record here. Nor does taxpayer contend that he

otherwise has standing to challenge a statute that has not been applied to him. *See, e.g., Otrompke v. Skolnik*, 826 F.3d 999, 1000 (7th Cir. 2016); *see generally Laurens v. Volvo Cars of N. Am., LLC*, 868 F.3d 622, 624 (7th Cir. 2017).

In sum, taxpayer has not raised any meaningful challenge to the Commissioner's determinations, or to the decision of the Tax Court sustaining those determinations.

CONCLUSION

The decision of the Tax Court should be affirmed.

Respectfully submitted,

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Attorney for Commissioner of Internal Revenue

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