

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 14, 2018*

Decided June 20, 2018

Before

DIANE P. WOOD, *Chief Judge*

JOEL M. FLAUM, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 17-3348

ROBERT EDWARD ORTH,
Petitioner-Appellant,

Appeal from the
United States Tax Court.

v.

No. 18049-16

COMMISSIONER OF INTERNAL
REVENUE,
Respondent-Appellee.

Ronald L. Buch,
Judge.

ORDER

Robert Orth failed to file tax returns for two years because he believes the law justifies his nonpayment. He petitioned the United States Tax Court for redetermination of tax deficiencies and additions to tax assessed by the Commissioner of Internal Revenue but elected to “reserve for appeal” his outlandish theories challenging the legality of the tax code. His restraint was strategic; he knew that tax courts often impose penalties on litigants who assert the frivolous tax-protester arguments that Orth now

* We agreed to decide this case without oral argument because the appeal is frivolous. *See* FED. R. APP. P. 34(a)(2)(A).

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presents for review. *See* 26 U.S.C. § 6673(a)(1)(B). In his response to a motion for summary judgment, Orth referred to his own arguments as “off-limits” and acknowledged that he is “banned from mentioning” and “barred from arguing” them in the Tax Court. The Tax Court entered summary judgment for the Commissioner, finding that Orth had not contested the facts establishing the tax deficiencies.

Orth insists that he is not a tax protester. Regardless of his disclaimer, he has filed an appeal rife with tax-protester arguments that this court and others have repeatedly deemed frivolous. He contends, for example, that United States citizens are not subject to an income tax, that the Treasury regulations violate the Sixteenth Amendment because only Congress can collect income taxes, and that wages are not taxable income. *See United States v. Stuart*, 773 F.3d 849, 850–51 (7th Cir. 2014) (identifying tax-protester argument that wages are not income); *United States v. Benson*, 561 F.3d 718, 720 (7th Cir. 2009) (calling a tax-protester argument challenging the constitutionality of the Sixteenth Amendment “frivolous”); *United States v. Cooper*, 170 F.3d 691, 691 (7th Cir. 1999) (labeling same arguments “frivolous squared”). Orth’s arguments raise no nonfrivolous challenge to the Commissioner’s assessment and do not excuse deficiencies in his income taxes.

Because this appeal is frivolous, we AFFIRM the decision of the Tax Court and direct Orth to show cause within 14 days why sanctions should not be imposed under Rule 38 of the Federal Rules of Appellate Procedure. *See Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006) (establishing that \$4,000 is the presumptive sanction for a tax appeal of this type).