United States Tax Court

T.C. Memo. 2026-87

CHRISTOPHER AUBUCHON,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 15097-24, 15098-24. Filed September 16, 2026.

Christopher Aubuchon, pro se.

Brandon V. Enquist, *Jordan L. Grace*, and *Shannon J. Ryser*, for respondent.

MEMORANDUM OPINION

ARBEIT, *Judge*: For taxable years 2019 and 2020 (years at issue), petitioner stipulated that he received amounts reported as wages, nonemployee compensation, other income, and rents. When he filed his federal income tax returns, however, he reported no income and requested a refund of the tax withheld from amounts reported as wages.

In letters attached to his returns, petitioner offered frivolous arguments to justify his position. Although respondent initially issued refunds, he later determined deficiencies, additions to tax for failure to timely file returns under section 6651(a)(1), and accuracy-related penalties under section 6662.[1] Petitioner then filed the Petitions,

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure. We round monetary amounts to the nearest dollar.

Served 09/16/26

[*2] seeking redetermination of the deficiencies, additions to tax, and accuracy-related penalties.

This is not petitioner's first time before this Court. Two years ago he brought a similar case. *See Aubuchon v. Commissioner* (*Aubuchon I*), T.C. Memo. 2024-115. In that opinion we described petitioner as a "quintessential tax protester." *Id.* at *2. We also warned him that "we consider his arguments to be frivolous and that his continued assertion of these same arguments before this Court may result in a penalty of up to $25,000 under section 6673(a)." *Id.* at *2 n.3.

Petitioner, while respectful and well spoken, remains unabashed. At a hearing in Knoxville, Tennessee, we reminded him of the warning issued in his prior case and noted more than once that, if he persisted in making frivolous arguments, he would be subject to additional penalties. He persisted anyway. Because the agreed facts and the law support a ruling for respondent, we will sustain the deficiencies, additions to tax, and accuracy-related penalties under section 6662(d). And because, despite repeated warnings, petitioner insisted on pursuing frivolous arguments, we will also impose a penalty under section 6673(a).

Background

When he filed the Petitions, petitioner resided in Tennessee.[2] Absent stipulation to the contrary, appeal of these cases would seem to lie to the U.S. Court of Appeals for the Sixth Circuit. *See* § 7482(b)(1)(A), (2). By joint Motion pursuant to Rule 122, these consolidated cases were submitted fully stipulated for decisions without trial.

Petitioner holds a doctorate from Stanford University and has founded several companies, in which he served as chief executive and chief technology officer. *Aubuchon I*, T.C. Memo. 2024-115, at *2. For 2019 petitioner stipulated that he "received amounts generally consistent with records reflecting payments" from three payers: (1) Exafuel, Inc., filed Form W–2, Wage and Tax Statement, reporting wages of $4,615; (2) Innovative Micro Tech., Inc., filed Form 1099–MISC, Miscellaneous Income, reporting nonemployee compensation of

[2] Petitioner has represented to the Court that he resides in Tennessee. And both these cases and *Aubuchon I* were calendared for trial in Knoxville. Nonetheless petitioner continues to use a California address as his mailing address for court filings and other correspondence. He also filed an appeal of *Aubuchon I*, which is still pending, with the U.S. Court of Appeals for the Ninth Circuit. *See Aubuchon v. Commissioner*, No. 25-4033 (9th Cir. filed June 30, 2025).

[*3] $48,229; and (3) 221 Prop. Servs., Inc., filed Form 1099 reporting rents of $13,800. For 2020 petitioner again stipulated that he "received amounts generally consistent with records reflecting payments" from three payers: (1) Xperi Corp. filed Form W–2 reporting wages of $95,934; (2) Vital Proteins filed Form 1099 reporting other income of $43,603; and (3) 221 Prop. Servs., Inc., filed Form 1099 reporting rents of $15,010.

When he filed his 2019 and 2020 Forms 1040, U.S. Individual Income Tax Return (returns), petitioner claimed that he had earned no income and was entitled to a refund of all tax withheld on his wages. To ensure there was no doubt about his position, petitioner printed the following across the first page of his 2019 return in bold, red, uppercase font: **NOT LIABLE**. In letters attached to both returns, he explained his requests for refunds. He stated that he was not engaged in a "trade or business" but was "a private sector worker." He also stated that the amounts reported as wages were not "privileged, from holding a public office, or otherwise as defined by [section 3401]," which defines wages.

In addition to the letters and signed affidavits, he submitted Forms 4852, Substitute for Form W–2, Wage and Tax Statement, or Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to the Internal Revenue Service (IRS) reiterating the same claims and purporting to correct "erroneous W–2 information" submitted by each payer for the years at issue.[3] He stated that the "payers" of his wages "wrongfully withheld tax from earnings not subject to tax" under sections 3121(a) and 3401(a).

Petitioner mailed his returns together. The IRS recorded both as having been received on July 20, 2021. On December 13, 2021, the IRS issued refunds for the years at issue of $146 and $8,516, respectively. The IRS later selected petitioner's returns for examination. On June 19, 2024, the IRS issued for each year at issue a Notice of Deficiency (Notices) determining deficiencies, additions to tax for failure to timely

[3] The general instructions for Form 4852 state: "The IRS will challenge the claims of individuals who attempt to avoid or evade their federal tax liability by using Form 4852 in a manner other than as prescribed." Form 4852 (Rev. 9-2020), at 2. Form 4852 also describes potential penalties for improper use, including accuracy-related penalties, civil fraud penalties, and a $5,000 civil penalty for filing a frivolous return or submitting a specified frivolous submission under section 6702. Respondent determined only accuracy-related penalties under section 6662 and did not determine civil fraud penalties or civil penalties under section 6702.

[*4] file returns under section 6651(a)(1), and accuracy-related penalties under section 6662[4] in the amounts set forth below:

Year	*Deficiency*	*Addition to Tax*	*Accuracy-Related Penalty*
		§ 6651(a)(1)	*§ 6662*
2019	$13,899	$3,439	$2,780
2020	28,195	2,965	5,639

Petitioner petitioned for redetermination of the deficiencies and penalties determined in the Notices. In his Answer, respondent asserted that he sent petitioner a letter "detailing the penalties for pursuing frivolous tax arguments."

On May 4, 2026, the Court held a hearing at its trial session in Knoxville, Tennessee, for the parties to present their legal arguments. At the hearing, petitioner asserted that he stood by the arguments in the letters attached to his returns. He also seemed to suggest that, by issuing refunds to him, respondent had forfeited the right to determine deficiencies. But mostly petitioner focused on ostensible errors underlying the Notices that either rendered them invalid or entitled him to some kind of explanation from respondent. We deem petitioner to have made oral Motions to Dismiss for Lack of Jurisdiction (Motions to Dismiss). He also made oral Motions to Shift the Burden of Proof. We previously denied the Motions to Shift the Burden of Proof and took under advisement the Motions to Dismiss.

One last point. We asked petitioner more than once during the hearing whether he wished to speak with the lawyers from the legal clinic who were present for the Court's calendar call. When, in the middle of the hearing, he accepted our offer, we took a 30-minute recess and directed him to ask the trial clerk for additional time if he so desired. Unfortunately he returned to the hearing determined to maintain his frivolous position.

[4] Respondent determined in the Notices that the underpayments of tax were attributable to one or both of the following: (1) negligence or disregard of rules or regulations or (2) substantial understatements of income tax. For each year at issue petitioner's case history report also states, in an entry dated June 10, 2024: "Manager approval to propose Accuracy Related Penalty Substantial Understatement of Tax IRC 6662(d) per Lead sheet completed on case."

[*5] *Discussion*

I. *Jurisdiction*

At the hearing petitioner moved to dismiss for lack of jurisdiction, arguing that vague yet allegedly fatal flaws in the Notices rendered them invalid. Our Court's jurisdiction to redetermine a deficiency depends on a valid Notice of Deficiency and a timely filed petition. *See* §§ 6212(a), 6213(a); *Hallmark Rsch. Collective v. Commissioner*, 159 T.C. 126, 130 (2022) (citing *Abeles v. Commissioner*, 91 T.C. 1019, 1025 (1988)). To be valid, "[a] notice must at a minimum advise the taxpayer that his tax return is deficient for a particular year and specify the amount of the deficiency or provide the information necessary to compute the deficiency." *Abrams v. Commissioner*, 814 F.2d 1356, 1357 (9th Cir. 1987), *aff'g per curiam* 84 T.C. 1308 (1985); *accord Gaska v. Commissioner*, 800 F.2d 633, 634 (6th Cir. 1986), *aff'g* 84 T.C. 1308 (1985); *see also* § 7522(a). In reviewing a challenge to the validity of a Notice of Deficiency, we do not look behind the notice to examine the evidence used by the IRS, its motive, or the administrative policies or procedures involved in determining the deficiency. *See Greenberg's Express, Inc. v. Commissioner*, 62 T.C. 324, 327 (1974). "[I]f the notice is sufficient to inform a reasonable taxpayer that the Commissioner has determined a deficiency, our inquiry ends there; the notice is valid." *Dees v. Commissioner*, 148 T.C. 1, 6 (2017).

The Notices here inform petitioner that the IRS has determined his tax liabilities for the years at issue and provide sufficient information to compute the deficiencies by identifying the amounts and sources of unreported income. Because the Notices are valid on their face, we will deny petitioner's Motions to Dismiss.

II. *Unreported Income*

A. *Burden of Proof*

In general, the Commissioner's determinations set forth in a Notice of Deficiency are presumed correct, and the taxpayer bears the burden of proving them erroneous. Rule 142(a)(1); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). In the case of unreported income, however, the Commissioner must first establish a minimal evidentiary foundation connecting the taxpayer with income-producing activity or showing actual receipt of unreported income. *Walquist v. Commissioner*, 152 T.C. 61, 67 (2019); *Sanders v. Commissioner*, T.C. Memo. 2023-71, at *3, *aff'd*, No. 24-1053, 2024 WL 5347248 (6th Cir. Dec. 13, 2024); *see also*

[*6] *Hardy v. Commissioner*, 181 F.3d 1002, 1004 (9th Cir. 1999) (addressing the Commissioner's burden to first put forth some evidence of unreported income before the presumption of correctness applies), *aff'g* T.C. Memo. 1997-97; *United States v. Walton*, 909 F.2d 915, 919 (6th Cir. 1990) (holding that Commissioner may not rely on the presumption of correctness without a "minimal evidentiary foundation" connecting the taxpayer with the alleged unreported income). Once the Commissioner meets this burden of production, the burden is on the taxpayer to prove by a preponderance of the evidence that the Commissioner's determinations are arbitrary or erroneous. *See Walquist*, 152 T.C. at 67–68. Submission of a case under Rule 122 does not alter the burden of proof. Rule 122(b).

Where, as here, the taxpayer has stipulated receiving the unreported amounts, the Commissioner has necessarily met his burden of production as to the unreported income. *See El v. Commissioner*, 144 T.C. 140, 143 (2015). The parties' dispute concerns only whether those amounts constitute taxable income. Thus these cases come down to petitioner's legal arguments that the amounts he received are not taxable income. As we have previously explained to him, he is mistaken.

B. *Petitioner's Frivolous Arguments*

Gross income includes all income from whatever source derived and specifically includes compensation for services, gross income from business, and rents. *See* § 61(a)(1), (2), (5). In the letters accompanying his returns, petitioner appears to contend that only certain wages are subject to federal income tax. He relies on sections 3121(a) and 3401, which broadly define wages for employment tax purposes.[5] But even if those provisions defined wages for income tax purposes, petitioner identifies no applicable exception—and indeed none exists. To quote *Aubuchon I*, T.C. Memo. 2024-115, at *5:

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[5] Section 3121(a) provides: "For purposes of this chapter, the term 'wages' means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash," with exceptions not applicable here. Section 3121 is part of the Code under subtitle C—Employment Taxes, chapter 21—Federal Insurance Contributions Act.

Similarly section 3401(a) provides: "For purposes of this chapter, the term 'wages' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash," with exceptions not applicable here. Section 3401 is part of the Code under subtitle C—Employment Taxes, chapter 24—Collection of Income Tax at Source on Wages.

[*7] We generally do not address frivolous arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984). Mr. Aubuchon's assertion that his earnings are not taxable income has been identified as a "frivolous position" in I.R.S. Notice 2010-33, 2010-17 I.R.B. 609, and we have done the same.

See also Wnuck v. Commissioner, 136 T.C. 498, 513 (2011) ("There is . . . little advantage to be gained by addressing frivolous arguments, and there are disadvantages that may accrue from doing so. For that reason, litigants who present frivolous arguments should not expect to see them answered in opinions of this Court."); *Briggs v. Commissioner*, T.C. Memo. 2016-86, at *10 (finding taxpayer's argument that "wages from private-sector employers are not 'income' for federal income tax purposes" to be frivolous).

We note that petitioner makes no argument with respect to the amounts reported to him on Forms 1099 as nonemployee compensation, as other income, or as rents. He is deemed to have conceded the Commissioner's determinations with respect to those amounts.[6] *See Nis Fam. Tr. v. Commissioner*, 115 T.C. 523, 537, 539–41 (2000) (holding that, where taxpayers made only frivolous and groundless arguments and thus failed to assign "justiciable error" to any of Commissioner's determinations, taxpayers were deemed to concede all deficiency adjustments); *see also Boggs v. Commissioner*, 569 F.3d 235, 237–38 (6th Cir. 2009) (holding that taxpayer who raised only frivolous arguments and did not properly support his claims failed to demonstrate any error in deficiency determination), *aff'g* T.C. Memo. 2008-81. Regardless, petitioner has failed to show that those amounts are not income.

III. *Additions to Tax and Penalties Under Sections 6651 and 6662*

The Commissioner generally bears the burden of production for penalties and additions to tax and must introduce evidence that imposing them is appropriate. *See* § 7491(c); *Wheeler v. Commissioner*,

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[6] At the hearing petitioner made offhand references to sections 6201(d) and 7405. But he failed to satisfy the requirements of section 6201(d) because he did not establish a reasonable dispute with respect to the accuracy of any amount of income reported on the information returns filed with the IRS by third parties. To the contrary: He stipulated that he received those amounts. Similarly he failed to establish that section 7405 applies here.

[*8] 127 T.C. 200, 206 (2006), *aff'd*, 521 F.3d 1289 (10th Cir. 2008). If, however, a taxpayer concedes a penalty or addition to tax—by raising only frivolous arguments and failing to assign any "justiciable error" to the Commissioner's determinations—the burden of production is no longer relevant. *See Funk v. Commissioner*, 123 T.C. 213, 217–18 (2004) (holding that, because petition failed to challenge section 6651(a)(1) additions to tax, taxpayer was deemed to have conceded the issue, thus relieving Commissioner of any burden of production); *Swain v. Commissioner*, 118 T.C. 358, 363–65 (2002) (holding that, because petition failed to challenge section 6662 penalties, taxpayer was deemed to have conceded the issue, thus relieving Commissioner of any burden of production).

A. *Additions to Tax for Failure to Timely File Returns Under Section 6651(a)(1)*

Section 6651(a)(1) imposes an addition to tax for failure to file a timely return, unless the taxpayer proves that the failure is due to reasonable cause and not due to willful neglect. Here the stipulations demonstrate that the returns were filed late—on July 20, 2021. Petitioner did not argue otherwise and did not allege that he had reasonable cause. *See United States v. Boyle*, 469 U.S. 241, 245–46 (1985) (holding that taxpayer bears the burden of proving reasonable cause and lack of willful neglect). He has therefore conceded any objections as to the additions to tax. *See Funk*, 123 T.C. at 217–18. Thus he is liable for the additions to tax for failure to timely file returns for the years at issue.

B. *Accuracy-Related Penalties Under Section 6662*

Section 6662(a) imposes a penalty equal to 20 percent of the portion of the underpayment of tax attributable to, for example, a taxpayer's negligence or disregard of rules or regulations, or for a substantial understatement of income tax. An understatement is "substantial" if it exceeds the greater of 10 percent of the tax required to be shown on the return for the taxable year, or $5,000. § 6662(d).

For penalties under section 6662, the Commissioner's burden of production generally includes showing compliance with the supervisory approval requirement of section 6751(b). For each year at issue petitioner's case history report notes supervisory approval of the substantial understatement penalty. Each entry is dated June 10, 2024, nine days before respondent mailed the Notices on June 19, 2024.

[*9] Respondent has thus "come forward with evidence of penalty approval," and therefore petitioner "must come forward with contrary evidence." *See Frost v. Commissioner*, 154 T.C. 23, 34–35 (2020). Petitioner has not done so. Respondent thus has satisfied his burden of production with respect to the substantial understatement penalties for the years at issue. *See Minnig v. Commissioner*, T.C. Memo. 2023-1, at *5–6 (holding that Commissioner satisfied section 6751(b) with a case history report documenting supervisory approval of substantial understatement penalty before penalty was first communicated to taxpayer).

For each year at issue petitioner's understatement of income tax exceeds $5,000, which is greater than 10 percent of the tax required to be shown on the return, and is thus substantial. Because petitioner neither alleged nor established that he had reasonable cause or acted in good faith, *see* § 6664(c)(1), application of the penalty for substantial understatement is proper. Accordingly we will sustain the accuracy-related penalty for substantial understatement of income tax for each year at issue. We need not address the negligence penalties.

IV. *Penalties for Frivolous Arguments Under Section 6673*

This Court may impose a penalty of up to $25,000 whenever a taxpayer advances frivolous or groundless positions in court proceedings. § 6673(a)(1)(B). Frivolous positions are those "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." *Nis Fam. Tr.*, 115 T.C. at 544 (quoting *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986) (holding that the inquiry as to whether a taxpayer advanced a frivolous or groundless position is objective)); *see also Boggs v. Commissioner*, 569 F.3d at 237–38 (where taxpayer raised only frivolous arguments, affirming Court's imposition of section 6673 penalty and finding no abuse of discretion); *Hansen v. Commissioner*, 820 F.2d 1464, 1470 (9th Cir. 1987) (explaining that section 6673 penalty is permissible when a taxpayer should have known the position is frivolous). "The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled principles before they file returns and litigate." *Takaba v. Commissioner*, 119 T.C. 285, 295 (2002).

Petitioner, who has been warned more than once that he is advancing frivolous arguments, nonetheless pushes forward. We should, and we will, impose a penalty. The facts and circumstances of these cases inform our decision as to the appropriate penalty amount. *See*

[*10] *generally Leyshon v. Commissioner*, T.C. Memo. 2015-104, at *24–29 (describing several factors the Court considers in deciding whether to impose a penalty and, if so, the appropriate amount), *aff'd*, 649 F. App'x 299 (4th Cir. 2016).

Petitioner is well educated; he holds a doctorate from Stanford University and has founded several companies. *Aubuchon I*, T.C. Memo. 2024-115, at *2. He has served as chief executive and chief technology officer of those companies, where he received compensation for services. *See id.* Throughout the proceedings, he has shown his ability to research the law and draft polished, though mistaken, filings. He has also demonstrated that he can understand the law when doing so suits his purposes. In these cases he has spent considerable time and effort submitting forms to the IRS to "correct erroneous W–2 information," writing letters expounding his view of the law, and filing returns asserting that he is "not liable." And yet, despite the outcome of his prior case, he continues to pursue the same frivolous arguments and to disregard warnings. As we stated before: "While his chosen arguments are the kind that have long been held frivolous by this court, the research accomplished and the application of knowledge to his situation demonstrate that Mr. Aubuchon understands his tax liability." *Aubuchon I*, T.C. Memo. 2024-115, at *10 n.11.

The facts and circumstances warrant the imposition of a penalty. Petitioner knows (or should have known) that his positions are frivolous and yet has not been dissuaded from asserting them. We will impose a penalty of $5,000.[7] *See Leyshon*, T.C. Memo. 2015-104, at *24, *30–33. We decline to impose a higher amount for one reason. Petitioner's cooperation with respondent in stipulating "to the fullest extent," *see*

[7] While he may consider the penalty here modest, petitioner would do well to consider this his final warning. Should he appear before us in the future, he should not again make frivolous arguments. *See Wnuck*, 136 T.C. at 514 (increasing section 6673 penalty where taxpayer, despite warning, filed motion for reconsideration repeating frivolous arguments); *Wheeler v. Commissioner*, T.C. Memo. 2011-278, slip op. at 5–6 (imposing maximum penalty where prior penalties failed to deter misconduct); *see also Montero v. Commissioner*, No. 26-60172, 2026 WL 1906873, at *1 (5th Cir. July 2, 2026) (per curiam) (affirming Court's imposition of $25,000 sanction for advancing frivolous position), *aff'g* No. 7697-20 (T.C. Nov. 25, 2025); *Montero v. Commissioner*, No. 26-60167, 2026 WL 1679030, at *1 (5th Cir. June 10, 2026) (per curiam) (same), *aff'g* No. 10107-24L (T.C. Nov. 25, 2025); *Montero v. Commissioner*, No. 24-60302, 2024 WL 5105532, at *1 (5th Cir. Dec. 9, 2024) (per curiam) (affirming penalty of $5,000), *aff'g* Transcript of Bench Opinion, No. 10587-22 (T.C. Feb. 4, 2024); *Montero v. Commissioner*, No. 24-60190, 2024 WL 4491604, at *1 (5th Cir. Oct. 15, 2024) (per curiam) (affirming penalty of $25,000), *aff'g* No. 22454-21 (T.C. Nov. 2, 2023).

[*11] Rule 91(a)(1), and agreeing to submit these cases fully stipulated under Rule 122 tempers our view of his otherwise exasperating conduct. Our forbearance reflects the great weight we attach to our Rules promoting judicial economy, and particularly to our pretrial procedures. *See Branerton Corp. v. Commissioner*, 61 T.C. 691, 692 (1974).

V. *Conclusion*

Petitioner remains unapologetic. Because the agreed facts support a ruling for respondent, we will sustain the deficiencies, additions to tax, and accuracy-related penalties under section 6662(d). Because petitioner insists on pursuing frivolous arguments, we will impose a penalty under section 6673(a).

To reflect the foregoing,

An appropriate order will be issued, and decisions will be entered for respondent.