



United States Tax Court
Washington, DC 20217

Jack Donald Supinger,)	
)	
Petitioner)	
)	
v.)	Docket No. 10957-20.
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	
)	
)	

ORDER OF SERVICE OF TRANSCRIPT

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to the Commissioner a copy of the pages of the transcript of the trial in this case before the undersigned judge at the Columbia, South Carolina, remote session containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

(Signed) David Gustafson
Judge

Served 10/29/21

1 Bench Opinion by Judge David Gustafson

2 October 8, 2021

3 Jack Donald Supinger v. Commissioner of Internal Revenue

4 Docket No. 10957-20

5 THE COURT: The Court has decided to render the
6 following as its oral findings of fact and opinion in this
7 case. This bench opinion is made pursuant to the
8 authority granted by section 7459(b) of the Internal
9 Revenue Code and Tax Court Rule 152; and it shall not be
10 relied upon as precedent in any other case. References in
11 this opinion to rules are to the Tax Court Rules of
12 Practice and Procedure, and references to sections are to
13 the Internal Revenue Code (26 U.S.C.), as amended and in
14 effect at the relevant times. Some dollar amounts are
15 rounded.

16 This is a deficiency case brought pursuant to
17 section 6213(a), in which petitioner, Jack Donald
18 Supinger, asks us to redetermine a deficiency in his
19 Federal income tax for the year 2017, as determined by
20 respondent, the Commissioner of the Internal Revenue
21 Service ("IRS"), and as set forth in the statutory notice
22 of deficiency ("SNOD") sent to Mr. Supinger on February 5,
23 2020. (Ex. 1-C.) Mr. Supinger's deadline to file a
24 petition with the Tax Court would ordinarily have expired
25 on May 5, 2020. See sec. 6213(a). However, in response



1 to the COVID-19 pandemic, the IRS issued Notice 2020-23,
2 which extended this deadline to July 15, 2020. Mr.
3 Supinger's petition bears a postmark of July 14, 2020, and
4 it is therefore treated as timely filed. See sec.
5 7502(a)(1). We accordingly have jurisdiction over this
6 case.

7 Trial of this case was conducted remotely on
8 October 4, 2021, with the parties and the Court attending
9 virtually via zoomgov.com from their respective locations.
10 Mr. Supinger represented himself, and Timothy J. Driscoll,
11 Jr., represented the Commissioner.

12 The issues for decision are: (1) whether there
13 is a deficiency in Mr. Supinger's Federal income tax for
14 the year 2017; (2) whether he is liable for the section
15 6662(a) accuracy-related penalty for the year 2017; and
16 (3) whether he should be required to pay to the United
17 States a penalty pursuant to section 6673(a)(1) for
18 maintaining frivolous or groundless positions in this
19 Court. We will hold Mr. Supinger liable for a deficiency
20 and accuracy-related penalty for 2017. We will also
21 require Mr. Supinger to pay a \$5,000 penalty to the United
22 States for maintaining frivolous or groundless positions
23 in this Court.

24 On the evidence before us, and using the burden-
25 of-proof principles explained below, the Court finds the



1 following facts:

2 FINDINGS OF FACT

3 Mr. Supinger resided in South Carolina at the
4 time he filed his petition in this case.

5 Petitioner's income

6 Mr. Supinger was employed in 2017 as a plumber's
7 assistant by J.R. Putman, Inc., and Frontier
8 Communications (see Exs. 3-P, 4-P), and he received
9 "payments" (see Ex. 5-P) for his labor by direct deposit
10 to his bank account. He earned \$4,083 from Putman in
11 January and February and earned \$59,388 from Frontier in
12 February through December. (Exs. 7-R, 10-R to 13-R).
13 Both Frontier and Putman prepared and sent to him and to
14 the Government Forms W-2, "Wage and Tax Statement",
15 showing the amounts of wages he received and of federal
16 and state taxes withheld. Frontier issued his W-2 from a
17 California subsidiary and by mistake issued a duplicative
18 Form W-2 from a Connecticut subsidiary. Mr. Supinger also
19 received from FMS Investment Corp. a Form 1099-MISC,
20 "Miscellaneous Income", reporting non-employee
21 compensation of \$1,000. (Ex. 7-R, at 007-008).

22 Petitioner's income tax return

23 Mr. Supinger filed his Form 1040EZ, "Income Tax
24 Return for Single and Joint Filers With No Dependents",
25 for the 2017 year on or before April 15, 2018. (Ex. 2-



1 P.). On his return, Mr. Supinger reported income of \$0
2 and claimed entitlement to a refund of \$5,993 (apparently
3 calculated by aggregating the withholding amounts listed
4 on his Forms W-2 for Federal income tax, social security
5 tax, and Medicare tax). (Ex. 2-P.) Mr. Supinger also
6 filed two Forms 4852, "Substitute for Form W-2, Wage and
7 Tax Statement * * *", which listed the same amounts of tax
8 withholdings as his Forms W-2 but listed wages as \$0.
9 (Exs. 3-P, 4-P). Also attached to his 2017 income tax
10 return is a letter (Ex. 5-P) signed by Mr. Supinger, which
11 stated:

12 The Form 4852 submitted with the Form 1040ez is
13 to rebut, and correct information on a document
14 W-2 known to have been submitted to the IRS by
15 the party on line 5 of Form 4852 referred to as
16 "payer", erroneously alleging that I received
17 payments connected to taxable activities, as
18 described in the Internal Revenue Code (IRC)
19 Section 3121 and 3401 "wages". That report is
20 hereby disputed.

21 The payments made to me did not result from any
22 federally taxable activity whatsoever and do not
23 constitute any taxable income under relevant
24 income tax law. I rebut the characterization of
25 non-taxable payments to me as reportable



1 "wages".

2 Please note that any "Social Security Tax"
3 withheld and "Medicare Tax" withheld were
4 withheld from non-taxable payments and are
5 included on Form 4852 and Form 1040EZ.

6 Examination and deficiency determination

7 Upon processing Mr. Supinger's 2017 Federal
8 income tax return, the IRS froze his claim for a refund
9 and opened the return for a correspondence examination.
10 (Ex. 9-R.) During the examination, the IRS adjusted Mr.
11 Supinger's 2017 return to include wages of about \$123,000
12 (i.e., including twice the wages reported by Frontier) and
13 self-employment income of \$1,000, and recalculated his
14 income tax liability to equal \$24,730, plus self-
15 employment tax of \$141, for a total deficiency of \$24,871.
16 (Ex. 1-C at 5). The examining agent made an initial
17 determination that a 20-percent accuracy-related penalty
18 under section 6662 was appropriate, and his immediate
19 supervisor approved the assertion of the penalty by typing
20 an entry in computerized "Case Notes" for Mr. Supinger's
21 2017 year. (Ex. 1-C at 6.) The IRS sent to Mr. Supinger
22 an SNOD, explaining the adjustments to his return, the
23 resulting tax deficiency and penalty, and his balance due.
24 (Ex. 1-C).

25 Tax Court proceedings



1 Mr. Supinger filed his petition for
2 redetermination of the deficiency, and his case was
3 eventually set for trial.

4 In the Commissioner's pre-trial memorandum (Doc.
5 7), he conceded that the amount of the deficiency, as set
6 forth in the SNOD, was excessive because of the
7 duplicative Form W-2 from Frontier. The Commissioner also
8 conceded the \$1,000 of non-employee compensation reported
9 by FMS Investment. To account for these concessions, the
10 Commissioner presented a calculation (Doc. 7, Ex. A)
11 showing that the correct amount of Mr. Supinger's
12 deficiency for 2017 is \$9,008, and that his income tax
13 withholding was \$1,137, rather than the larger amount he
14 reported.

15 To assure preparation for the upcoming trial,
16 the Court held a telephone conference call with the
17 parties on September 15, 2021. The Court then issued an
18 order (Doc. 12) that memorialized the call and stated:

19 During the call, the Court warned Mr. Supinger
20 that a Tax Court petitioner who makes frivolous
21 contentions (such as that the income tax is
22 unconstitutional, or that wages are not income,
23 etc.) can become liable for a penalty of up to
24 \$25,000, pursuant to section 6673(a). There are
25 many cases imposing penalties against such

1 frivolous contentions, and the Court draws Mr.
2 Supinger's attention to the following two
3 examples: Ulloa v. Commissioner, T.C. Memo.
4 2010-68, and Wnuck v. Commissioner, 136 T.C. No.
5 24 (2011). The Court would take no pleasure in
6 imposing such a penalty here, but would rather
7 adjudicate Mr. Supinger's tax liability,
8 determining both his taxable income and also
9 deductions or credits to which Mr. Supinger
10 might be entitled that would reduce his tax
11 liability.

12 On September 28, 2021, the Court held with the
13 parties a video conference "dress rehearsal" to confirm
14 their ability to participate remotely via zoom.gov, and in
15 that video conference the judge repeated his warning about
16 the section 6673 penalty for frivolous positions.

17 Trial

18 At trial Mr. Supinger testified that he had no
19 taxable income for 2017, but he effectively refused to say
20 anything further about the income he received. He
21 professed to be unable to state his relationship to
22 Frontier and Putman. When questioned by counsel and the
23 Court, he professed not to understand the meaning of
24 "employed" or of having "received" money, and he claimed
25 not to be able to remember whether he worked as a

1 plumber's assistant in 2017 nor whether money was
2 deposited into his bank account. In several instances,
3 when directed by the Court to answer such questions, he
4 declined to answer on the grounds that it might
5 incriminate him to do so.

6 The Commissioner therefore called as witnesses
7 personnel from Frontier and Putman. They authenticated
8 company records showing that Mr. Supinger was an employee
9 and showing payments consistent with the Forms W-2.

10 At the conclusion of the trial, the judge stated
11 that he expected to read a bench opinion in which he would
12 sustain the deficiency (as recomputed). He also stated
13 that he was undecided about the amount of any penalty
14 under section 6673(a)(1), and he invited Mr. Supinger to
15 make any statement he wished to make that might affect the
16 amount of the penalty. In particular, the judge suggested
17 that Mr. Supinger might "assure me that you would not do
18 this again", but Mr. Supinger declined to offer any such
19 assurance.

20 OPINION

21 I. General Legal Principles

22 A. Burden of Proof

23 1. Deficiency

24 Generally, the Commissioner's determination of a
25 deficiency is presumed correct, and the taxpayer has the



1 burden of proving it wrong. See Rule 142(a). In
2 unreported income cases, that presumption attaches when
3 the Commissioner "provide[s] some predicate evidence
4 connecting the taxpayer to the charged activity".
5 Weimerskirch v. Commissioner, 596 F.2d 358, 361-362 (9th
6 Cir. 1979), discussed in Williams v. Commissioner, 999
7 F.2d 760, 764 (4th Cir. 1993). Once the Commissioner
8 presents that predicate evidence, the taxpayer bears the
9 burden of proving that he did not receive the income and
10 that the Commissioner's determination of a deficiency is
11 incorrect.

12 2. Penalties

13 The Commissioner bears the burden of production
14 with respect to the liability of an individual for any
15 penalty. Sec. 7491(c). To satisfy his burden, the
16 Commissioner must present sufficient evidence to show that
17 it is appropriate to impose the penalty in the absence of
18 available defenses. See Higbee v. Commissioner, 116 T.C.
19 438, 446 (2001). One element of the Commissioner's burden
20 of production is to show compliance with section
21 6751(b)(1), which requires the IRS to obtain written
22 supervisory approval before it formally communicates to
23 the taxpayer that he is liable for the penalty. See Clay
24 v. Commissioner, 152 T.C. 223, 249-250 (2019).

25 Once the Commissioner meets his burden of



1 production on penalties, the taxpayer must come forward
2 with persuasive evidence that the Commissioner's showing
3 is incorrect. Rule 142(a); Higbee, 116 T.C. at 447. Or
4 he may defend against the penalty with a showing of
5 "reasonable cause" and "good faith" under section
6 6664(c)(1).

7 B. Treatment of Frivolous Arguments

8 Litigants who advance frivolous arguments in the
9 Tax Court are not entitled to, and should not expect to
10 receive, opinions rebutting their positions. Wnuck v.
11 Commissioner, 136 T.C. 498 (2011). The IRS publishes and
12 updates a list of frivolous positions pursuant to section
13 6702(c). See I.R.S. Notice 2010-33, 2010-17 I.R.B. 609.
14 One of these frivolous positions is that a "taxpayer has
15 an option under the law to * * * elect to file a tax
16 return reporting zero taxable income and zero tax
17 liability even if the taxpayer received taxable income
18 during the taxable period for which the return is filed,
19 or similar arguments described as frivolous in Rev. Rul.
20 2004-34, 2004-1 C.B. 619."

21 Under section 6673(a)(1), "the Tax Court, in its
22 decision, may require the taxpayer to pay to the United
23 States a penalty not in excess of \$25,000" for instituting
24 proceedings primarily for delay, maintaining frivolous
25 positions, or unreasonably failing to pursue available



1 administrative remedies.

2 II. Income Tax Deficiency for 2017

3 Section 61(a)(1) defines a taxpayer's gross
4 income as "all income from whatever source derived,"
5 including "[c]ompensation for services". Sec. 61(a)(1).
6 The trial record includes credible evidence—including Mr.
7 Supinger's own Forms 4852 (Exs. 3-P, 4-P)—that he was
8 employed in 2017, and his own letter admits that he
9 received "payments" (see Ex. 5-P) for his labor. (See
10 also Exs. 7-R, 8-R, 10-R to 13-R.) Mr. Supinger therefore
11 bore the burden to prove that the Commissioner's
12 determination was incorrect. However, he did not offer
13 any evidence that he either did not receive compensation
14 for his employment in 2017, or that the compensation he
15 received qualifies for any actual exclusion from his
16 taxable income under the Federal income tax laws, but
17 rather he contended that his "self-assessment" of zero
18 taxable income and zero tax liability is somehow
19 conclusive. But under well-settled principles of Federal
20 income tax law, Mr. Supinger owes tax on the compensation
21 he received in 2017--though not, of course, on the
22 duplicative wages twice reported by Frontier and not on
23 the \$1,000 from FMS Investment that the Commissioner also
24 conceded. We will accordingly sustain the determination
25 of a deficiency against Mr. Supinger for 2017, in the



1 lower amount as computed by the Commissioner to reflect
2 his concession of the conceded amounts.

3 III. Section 6662(a) Accuracy-Related Penalty for 2017

4 Section 6662(a) imposes an "accuracy-related
5 penalty" equal to 20 percent of the portion of the
6 underpayment that is attributable to (among other things)
7 a "substantial understatement of income tax", sec.
8 6662(b) (2). For the purposes of section 6662(b) (2), an
9 understatement of income tax is "substantial" if it
10 exceeds the greater of "10 percent of the tax required to
11 be shown on the return" or \$5,000. Sec. 6662(d) (1) (A).
12 Mr. Supinger reported liability of \$0 on his 2017 Federal
13 income tax return. (Ex. 2-P). The deficiency for 2017,
14 as redetermined after the Commissioner's concessions,
15 equals \$9,008. (Doc. 7, Ex. A.) Because Mr. Supinger's
16 understatement of his Federal income tax liability was
17 thus greater than \$5,000, it was a "substantial
18 understatement" for purposes of section 6662(a) and (d).

19 As part of his burden of production on
20 penalties, the Commissioner must prove compliance with the
21 written supervisory approval requirements of section
22 6751(b) (1). To meet this burden the Commissioner offered
23 the testimony of the immediate supervisor, Adam R. Fisher,
24 and a certified copy of the entry that Mr. Fisher typed to
25 record his approval. We hold that the Commissioner has



1 carried his burden to show compliance with section
2 6751(b)(1). Accordingly, we will sustain the
3 determination of the 20-percent penalty against Mr.
4 Supinger for 2017, in the lower amount computed by the
5 Commissioner to correspond to the lower deficiency amount.

6 IV. Section 6673 Penalty for 2017

7 Mr. Supinger's position based on his "self-
8 assessment" and his zero return was plainly frivolous and
9 is therefore potentially subject to the penalty of section
10 6673(a)(1), in an amount as high as \$25,000. To guide our
11 discretion in deciding whether to impose a section
12 6673(a)(1) penalty and, if so, in what amount, this Court
13 "has considered any relevant facts and circumstances",
14 including a dozen possible circumstances we listed in
15 Leyshon v. Commissioner, 109 T.C.M. 1535, 1540-1542
16 (2015).

17 In Mr. Supinger's favor, we note that the amount
18 of the deficiency was not the nearly \$25,000 determined in
19 the SNOD but rather only about \$9,000. Consequently his
20 filing of his petition did thus result (no thanks to his
21 frivolous position) in a redetermination in his favor.
22 Moreover, we can say that Mr. Supinger was polite in the
23 conduct of the trial. He timely submitted his pretrial
24 memorandum and cooperated with the logistics of the remote
25 trial proceeding by electronically filing his exhibits.

1 Furthermore, as far as we know Mr. Supinger has not
2 previously made frivolous contentions in court nor been
3 penalized for doing so.

4 However, his conduct after the Commissioner had
5 made his concessions, when the only income in dispute was
6 obviously taxable to Mr. Supinger, was frivolous. He was
7 warned multiple times by this Court before trial that the
8 arguments contained in his petition and pretrial
9 memorandum regarding his "self-assessment" of the
10 taxability of his income in 2017 were frivolous and risked
11 incurring the imposition of a section 6673 penalty. Most
12 telling was Mr. Supinger's refusal to answer basic
13 questions about his employment status and compensation in
14 2017, when instead he professed to not remember basic
15 facts, to not know the meaning of words such as
16 "employed," "received," and "income," and to be unable to
17 answer the questions without "incriminating" himself. He
18 manifestly realized that if he gave frank answers to those
19 questions—if he simply admitted that he worked for
20 Frontier and Putman and that they paid him the amounts
21 they reported—then he would be liable for the tax at
22 issue. He fully understood that his "self-assessment"
23 theory could not survive an honest account of his
24 situation. So he dodged, evaded, and obfuscated. He put
25 the Commissioner to the expense and trouble of producing



1 witnesses to prove facts for which Mr. Supinger had no
2 rebuttal. These were facts that Mr. Supinger should have
3 stipulated, see Rule 91(a); and had he done so, the case
4 could have been decided without the expense and trouble of
5 a trial. This is the sort of behavior for which section
6 6673(a)(1) was invented.

7 Mr. Supinger's conduct in this litigation after
8 partial concession by the Commissioner and at trial
9 demonstrates bad faith, and we conclude that the
10 imposition of a penalty under section 6673(a)(1) is
11 justified. However, taking account of the mitigating
12 circumstances noted above (chiefly that this is Mr.
13 Supinger's first known offense and that this case did
14 result in a reduction of the deficiency from \$25,000 to
15 \$9,000), we will impose against him a penalty under
16 section 6673(a)(1) of only \$5,000. Mr. Supinger should
17 know that, if a \$5,000 penalty proves insufficient to
18 deter him from making frivolous arguments in the future,
19 then he is liable to incur a more substantial penalty up
20 to a maximum of \$25,000.

21 V. Reconsideration

22 We point out to Mr. Supinger (as we stated at
23 the end of trial) that the deadline to file a motion for
24 reconsideration is 30 days after the Court serves the
25 transcript of this opinion, see Rule 161. If Mr. Supinger

1 perceives any mathematical error in the computation of the
2 \$9,008 deficiency attached to the Commissioner's pretrial
3 memorandum (Doc. 7, Ex. A), then he could offer a
4 correction in such a motion.

5 Moreover, in a motion for reconsideration, Mr.
6 Supinger could address the penalty issue by offering the
7 Court his assurance that he will not hereafter repeat his
8 frivolous arguments in future litigation but will
9 acknowledge that, under the law as the courts unanimously
10 construe it, he owes Federal income tax on the
11 compensation he receives for his work. An unequivocal
12 commitment to that effect by Mr. Supinger could prompt a
13 reduction in the amount of the penalty. However, we warn
14 Mr. Supinger that, if he should attempt to use a motion
15 for reconsideration as an opportunity to repeat his
16 frivolous contentions, then he would be at risk for a
17 penalty even greater than \$5,000 to be imposed in this
18 case. See Wnuck v. Commissioner, 136 T.C. at 513-514.

19 VI. Conclusion

20 Mr. Supinger received compensation for his labor
21 in 2017, for which he owes Federal income tax. We will
22 accordingly sustain the deficiency, but in the reduced
23 amount (\$9,008) consistent with the Commissioner's partial
24 concession. In filing a "zero-return," Mr. Supinger
25 substantially understated his income tax and triggered

1 imposition of the 20-percent section 6662(a) accuracy-
2 related penalty, which we will sustain, again in the
3 reduced amount (\$1,801) consistent with the Commissioner's
4 partial concession. Furthermore, Mr. Supinger's
5 persisting in his frivolous position after the
6 Commissioner made his concessions demonstrates bad faith
7 and warrants imposition of a \$5,000 penalty under section
8 6673(a)(1). Decision to that effect will be entered in
9 favor of the Commissioner.

10 This concludes the Court's oral Findings of Fact
11 and Opinion in this case.

12 (Whereupon, at 2:23 p.m., the above-entitled
13 matter was concluded.)

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