No. 19-71432

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

PEYMON MOTTAHEDEH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE DECISION OF
THE UNITED STATES TAX COURT,
HON. RICHARD T. MORRISON
(Tax Court Case No. 22039-11)

APPELLANT'S REPLY BRIEF

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Will be amended a few days alter

TABLE OF AUTHORITIES

Cases:

Will be amended a few days later

Statutes:

Will be amended later

STATEMENT OF RELATED CASE

The US Tax Court case being appealed here was a joint case of husband and wife, Peymon and April Mottahedeh (PEYMON AND APRIL) that was heard in the US Tax Court, where the Court ruled against PEYMON AND APRIL and then split the total taxes in half between PEYMON AND APRIL, despite the fact that PEYMON AND APRIL had at time of marriage signed a document that specifically disavowed the California's community property laws and chose to treat each spouses, income, assets and liabilities, as income, asset and liabilities of each of them.

APRIL chose to file a separate appeal from the adverse decision of the US Tax Court, so that APRIL could make her separate arguments about the US Tax Court's erroneous application of community property laws on APRIL which led to an adverse finding against APRIL.

The arguments of this case about the IRS's failure to carry the IRS's burden of proof as required per 26 USC §7491(b) apply to APRIL'S appeal. APRIL's appeal, which is also before the Ninth Circuit Court of Appeals, is Case No. 19-71410.

Reply brief of Appellant

Appellant herein Peymon Mottahedeh (PEYMON) hereby submits this reply to Appellee (IRS)'s Reply Opening Brief (ROB.)[1] IRS concedes that The Tax Court made clear, reversable error in the ways listed below:

I. IRS concedes that failure of the Tax Court to apply the 26 USC §7491(b) burden of proof issue is the central issue of this case and that IRS failed to carry IRS' burden of proof under 26 USC §7491(b) issue by simply failing to address and refute Appellant's undisputed facts on this issue.

I. IRS concedes that since substantial amounts of bank and other financial records and income were available to IRS to reconstruct income of PEYMON AND APRIL that IRS should have met with PEYMON AND APRIL to purify and use thee bank and financial records to arrive at income amounts for PEYMON AND APRIL.

II. IRS concedes that IRS failed to meet with PEYMON AND APRIL to go over bank and financial records of PEYMON AND APRIL, thereby denying PEYMON AND APRIL to present and explain financial records to the IRS, by not citing anything in the record to refute the facts cited by PEYMON.

[1] "ROB" refers to Reply Opening Brief of Appellee, followed by page number where the citated language appears. "OBP" refers to Opening Brief of Peymon Mottahedeh. "OBA" Refers to Opening Brief of April Mottahedeh

III. IRS fails to refute ANY of the Court cases cited by PEYMON, their language, applicability or conclusions that relate to this case, therefore IRS admit that all of the cases cited by PEYMON are cited correctly, in context, properly and applicable to this case.

ADMISSIONS AND CONCESSIONS OF THE IRS FURTHER EXPLAINED AND POINTED OUT

II. IRS concedes that failure of the Tax Court to apply the 26 USC §7491(b) burden of proof issue is the central issue of this case and that IRS failed to carry IRS' burden of proof under 26 USC §7491(b) issue by simply failing to address and refute Appellant's undisputed facts on this issue.

ROB p. 3 claims erroneously that: "*This case does not involve any statutes, regulations, or other authorities that are specifically at issue or that are not commonly known*", even though PEYMON specifically mentioned and fully argued that Tax Court's failure to apply of 26 USC §7491(b) to this case is the central issue in this case.

Oddly, ROB p. 28 contradicts ROB p. 3 by stating: "*Even if the burden of proof mattered here, I.R.C. §7491(b) did not impose the burden on the IRS.*" Then IRS argues that just because the Bureau of Labor Statistics were slightly modified

by a few expenditure items of PEYMON AND APRIL, that 26 USC §7491(b) would not apply in this case.

Such an interpretation of 26 USC §7491(b) would in practice negate the clear intent of 26 USC §7491(b) by providing IRS a HUGE LOOPHOLE; merely modify a few numbers of expenditures and you can get around the intent of Congress; IRS would not have to show way IRS resorted to use BLS instead of bank and cash records and meeting with the persons who IRS is investigating to resolve the income issue.

Such an interpretation flies in the face of 26 USC §7491(b) and misreads the laws intent. The Committee Report of the IRS Restructuring and Reform Act of 1998 S. Rep. No. 105-174 under "*Explanation of Provisions*" of 26 USC §7491(b) the Committee states:

"*The provision also provides that in any instance in which the Secretary uses statistical information from unrelated taxpayers* ***solely to reconstruct an individual taxpayer's income*** *(such as average income for taxpayers in the area in which the taxpayer lives), the burden of proof is on the Secretary with respect to the item of income that was reconstructed by the Secretary.*" Emphasis added.

The Committee Report states that whenever IRS is going to use BLS for the sole purpose of reconstructing a person's income the burden of proof is on the IRS.

The Committee Report does NOT say that only when IRS solely uses BLS to reconstruct an item of income of a person the burden of proof is on the IRS.

Even the Tax Court did not have the temerity to turn Congress's law on its' head and instead chose to side-step the issue, but not ruling whether 26 USC §7491(b) applies this this case, and instead chose to let this honored Court be the one to hold the letter and intent of 26 USC §7491(b) which places the burden of proof on the IRS when using BLS data to impute income on people, as IRS had done here in PEYMON AND APRIL cases.

ROB failed to bring any part of the record before the Court to show that IRS carried its' burden of proof for primarily using BLS for imputing income on PEYMON AND APRIL.

Therefore, this Court should revere the Clear error of the Tax Court and rule that IRS failed to carry its' burden of proof by primarily using BLS data to impute income of PEYMON AND APRIL and set aside the taxes and penalties that are subject of this case for years 2001 through 2006.

III. IRS concedes that since substantial amounts of bank and other financial records and income were available to IRS to reconstruct income of PEYMON AND APRIL that IRS should have met with PEYMON AND APRIL to purify and use thee bank and financial records to arrive at income amounts for PEYMON AND APRIL.

OBP[2] p. 19 -33 fully cites from the record facts that make it abundantly clear that the AUDITOR who had plenty of bank and other financial records of PEYMON AND APRIL in her possession that should have been the starting point of AUDITOR's attempts to reconstruct income of PEYMON AND APRIL, followed up with meetings with PEYMON AND APRIL.

In addition, ROB cites Choi v. Commissioner, 379 F.3rd 638 (9th Circuit) which makes the case for PEYMON about how bank deposits are presumptively income and should have been used by the AUDITOR instead of BLS in this case: "*The commissioner correctly subtracted identifiable non-income and properly presumed the remainder of the deposits were taxable income. Therefore,* ***the use of bank deposits plus cash expenditures method was proper*** *because the Commissioner correctly subtracted identifiable non-income.* ***The alternative*** *method ... to reconstruct their income* ***was rejected.***" Emphasis

Therefore, it was clear error for the Tax Court for failing to rule that IRS should have used bank accounts of PEYMON AND APRIL as a starting point of reconstructing income of PEYMON AND APRIL instead of the alternative, the BLS figures that the AUDITOR used.

This error of Tax Court should be reversed by the court by setting aside the taxes and penalties for years 2001 through 2006 at issue in this appeal.

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[2] "OBP" refers to Opening Brief of Peymon Mottahedeh.

IV. IRS concedes that IRS failed to meet with PEYMON AND APRIL to go over bank and financial records of PEYMON AND APRIL, thereby denying PEYMON AND APRIL to present and explain financial records to the IRS, by not citing anything in the record to refute the facts cited by PEYMON.

ROB fails to rebut the clear showing by PEYMON that PEYMON AND APRIL had repeatedly called, FAXED and sent letters to the AUDITOR and/or AUDITOR'S manager to meet with PEYMON AND APRIL, to purify the bank and financial records by identifying any and all income as well as identifying non-income bank deposits of PEYMON AND APRIL.

Therefore, it is uncontested that IRS failed to meet IRS' burden of proof under 26 USC §7491(b) which places the burden of proof on the IRS when IRS resorts to using BLS data to impute income on people, as IRS had done here in PEYMON AND APRIL cases.

Therefore, it was clear error for the Tax Court to fail to rule that IRS had not met IRS' burden of proof per 26 USC §7491(b) for resorting to the use of BLS to reconstruct income of PEYMON AND APRIL.

Therefore, this court should reverse the Tax Court Memorandum and state that IRS should have used bank and other financial data as the starting basis of reconstructing income of PEYMON AND APRIL and that the AUDITOR should

have met with PEYMON AND APRIL obtain new documents and purify those records to reconstruct income of PEYMON AND APRIL instead of primarily using BLS to do so.

Based on the above, this court should set aside the tax and penalties for years 2001 through 2006 that are at issue.

V. IRS fails to refute ANY of the Court cases cited by PEYMON, their language, applicability or conclusions that relate to this case, therefore IRS admit that all of the cases cited by PEYMON are cited correctly, in context, properly and applicable to this instant case the way PEYMON has presented those court cases.

By not refuting in any way the citations of PEYMON in OB, ORB has admitted that all citation of law in the OB are correct; These citations of law support PEYMON's argument that IRS clearly and completely failed to meet IRS's burden of proof per 26 USC §7491(b); where the AUDITOR and AUDITOR's manger failed to use bank and other financial records of PEYMON AND APRIL and failed to meet with PEYMON AND APRIL to review and purify the bank and other financial records of PEYMON AND APRIL.

Therefore, the tax and penalties for years 2001 through 2006 should be abated in full by this court.

What IRS does present?

1) IRS avoids the 26 USC §7491(b) that imposes on IRS the burden of proof for using BLS to reconstruct PEYMON AND PEYMON's income by distracting the Court with statements on Freedom Law School's website and First Amendment protected tax and legal opinions of PEYMON on a website and based on the above conclusionary character assassinations of PEYMON AND APRIL - which all have no relevancy to the facts of this case.
2) To support the baseless factual and legal findings of the Tax Court repeatedly makes a series of claims that that are wholly unsupported by the record or actually refuted by the record.
3) IRS cites Court cases about burden of proof in tax cases that either a) actually make the case for PEYMON, or b) are irrelevant to this case because they were decided before enactment of 26 USC §7491(b) in 1998 which squarely and specifically put the burden of proof on the IRS when IRS chooses to use BLS to construct income, as was done in this case on PEYMON AND APRIL.

Detailed explanations of what IRS presents

1) IRS avoids the 26 USC §7491(b) and IRS' burden of proof for using BLS to reconstruct PEYMON AND PEYMON's income by distracting the Court with statements on Freedom Law School's website and First Amendment protected tax and legal opinions of PEYMON on a website and based on

the above use conclusionary character assassinations of PEYMON AND APRIL - which are all irrelevant to the facts of this case.

ROB P. 406 is all full of detailed quotes from website of Freedom Law School. Based on some observations and opinions expressed there, ROB clearly is trying to make this a trail of the First Amendment opinions and views of PEYMON. IRS is attempting to obtain the Court's bias against PEYMON AND APRIL by quoting in detail several controversial opinions of PEYMON about taxes.

If the Court were to fall for this lure of IRS, then this who appeal is a waste of time and a mockery of this court and justice. PEYMON is confident that the Court will not fall for this lure of IRS to become prejudiced and biased against PEYMON for PEYMON'S tax and legal opinions and instead and focus on the appliable facts and laws of this case instead.

2) To support the baseless factual and legal findings of the Tax Court repeatedly makes a series of claims that that are wholly unsupported by the record or actually refuted by the record.

Below is a few of the baseless or wholly erroneous statements the ROB:

a) ROB p.9: "*The IRS submitted copies of checks and money orders from customers of Freedom law School that were deposited into April's credit union account. (1-SER-18; see Doc.21, Exh. 12-J.)*" From the above statement impression is given that all or most of credit union account

deposits of April are from "*customers of Freedom Law School.*" Nothing could be further from the truth.

1-SER-18 which IRS also cites, is the Tax Court Memorandum, which is not fact.

Exhibit 12-J which allegedly supports 1-SER-18 is over 600 pages of deposits of checks of APRIL's credit union account. A cursory review of the 600 plus pages show that nearly all of the checks deposited in APRIL'S credit union account are NOT from "*customers of Freedom law School.*" If any of the pages of Exh. 12-J were from "*customers of Freedom law School*", IRS should have cited the pages in Exh. 12-J that show those checks, instead of forcing this honorable court to look through over 600 pages of Exh. 12-J to find the alleged checks from alleged ""*customers of Freedom law School.*" For the IRS.

Therefore, the baseless conclusion of the Tax Court in 1-SER-18 that "*The IRS submitted copies of checks and money orders from customers of Freedom law School that were deposited into April's credit union account.*" should be reversed and ignored as baseless.

b) ROB, p. 10-11 state.: "*Instead taxpayers sent a letter to Agent Thai stating that she would comply with the summons only she first answered a list of 36 'questions.' (2-SER-64, 93-101.)*" ROB, P. 30-31 states the same statement

without citing any part of the record in its support.

2-SER-64 only mentions a letter received by the AUDITOR from PEYMON AND APRIL; Nothing more. 2-SER, 93-101 does NOT say PEYMON and/or APRIL "*stating that she would comply with the summons only she first answered a list of 36 'questions.'*"

What the relevant part of 2-SER 93-101 and 2-SER-100-101 state is the opposite! PEYMON AND APRIL intended to and were planning to meet with the AUDITOR: "*After reading and considering the above words,... please do your best to give us specific answers to the questions that we have posed to you, so that we may be able to form a more specific idea of what you are looking for and ... we may bring the documents which would be responsive to you specific requests... Until we meet... When we meet we will bring with us...*"

It is clear that PEYMON AND APRIL were willing to comply with the IRS summons and meet with the AUDITOR. It was the AUDITOR that REPEATEDLY chose to not meet with PEYMON AND APRIL.

c) ROB, p. 10, states: "*A former client of Peymon's testified that he paid Peymon $22,000 in cash to represent him in a case before the California Franchise Tax Board. (2-SER-59-60.)*" No receipt from Mr. Magness was provided to support and document this naked claim of Mr. Magness.

Therefore, the unsupported claim of Mr. Magness should be not relied on, as much as if PEYMON AND APRIL claimed to have had $22,000 of taxable expenses that PEYMON AND APRIL paid with cash and present no receipt to support their claim of expenses.

This tax case is about years 2001 through 2006. Mr. Magness claimed that the alleged $22,000 was paid "*from [year]2003 to [year] 2009.*" Mr. Magness was never asked by IRS lawyer to break down this alleged $22,000 by years, showing how much was paid during each of the years 2003 through 2006 that are a part of this case.

Notably, it is undisputed that for years 2001 and 2002 Mr. Magness did not pay PEYMON anything. It is elementary that every taxable year is a separate taxable event. Therefore, the Franchise Tax Board representation payments of Magness to PEYMON can not be imputed to years 2001 and 2002 as the Tax Court did.

More importantly, the $22,000 applied also to years 2007, 2008 and 2009 which are NOT a part of this case. With this unclear record how can we know how much of this $22,000 could be attributed to years 2003 through 2006, which are a part of this case or to years 2007 through 2009 which are not a part of this?

Therefore, the alleged Mr. Magness payment to PEYMON for FTB

representation can not be a basis for anything for any of the years 2001 through 2006.

Had the AUDITOR not repeatedly refused to meet with PEYMON AND APRIL, the alleged payments of Mr. Magness to Peymon could have been discussed and properly resolved.

d) ROB, p. 10 states: "*The IRS submitted copies of official announcements of the hearings before the California Franchise Board in which taxpayer was listed as the representative of several other taxpayers. (1-SER-19; see Doc. 21, Ex. 19-J.)*" First of all, the hearings were before the California Board of Equalization (BOE), not the California Franchise Tax Board (FTB).

Second, the notice shows Peymon representing a few people for only ONE DAY hearing on September 12, 2006, not the entire 2006 year. Nothing about any representation of anyone by Peymon for years 2001 through 2005 is in the record.

Not only a one-day representation of a few individuals before BOE can not be imputed to having PEYMON representing them for the entire year of 2006, but most of the years at issue here, years 2001 through 2005, are not even in the picture. Again, each tax year is a separate taxable event. The statement of the Tax Court that PEYMON represented people before the FTB continuously for years 2001 through 2006 is clearly erroneous and

should be reversed.

e) ROB, P. 11 states: "*The bank records, including cancelled checks, revealed that April received payments made to Freedom Law School for entrance fees and instructional materials, which she deposited into her bank account. (2-SER-67; see Doc. 21, Ex. 12-J.)*" 2-SER-67-68 refer us to pages 28 and 45 f Exhibit 12-J, which ONLY show 2 checks; one for $180 and one for $130, among 600 plus pages of bank records of APRIL; nothing close to any significant portion of the 600 pages of cancelled checks of APRIL that Ex. 12-J is made up of.

The reasons for these 2 checks having been deposited into APRIL's account would have been discussed and resolved, if the AUDITOR and AUDITOR's manger would not have repeatedly refused to meet with PEYMON AND APRIL to go over these bank records and "purified" the bank records of APRIL.

f) ROB, p. 12 lambasts PEYMON AND APRIL with labels such as "*Taxpayers contend that by avoiding banks, not filing returns, and not cooperating with the audit they foil the IRS' effort to tax them…Through their business Freedom Law School… violating tax laws… refusing to comply…tax-avoidance scheme… Taxpayers tested that tax-avoidance scheme in this case. It failed.*"

No support for such statements is found anywhere in the record. It seems like IRS is hoping to have the court become prejudiced and biased against PEYMON AND APRIL by IRS' repeated baseless propaganda. PEYMON hopes that this court will resist such temptation of IRS and rule in this case based purely based on facts in the record and the applicable law, 26 USC §7491(b).

3) **IRS Relies on and cites the Tax Court's factually unsupported conclusions that are clear error, because IRS has failed to show any support in the record of this case for those tax court findings in IRS' brief.**

ROB P. 14-17 cites many of the erroneous conclusions of the Tax Court and never provides any evidentiary support for those conclusions of the Tax Court in any part of ROB. Therefore, those conclusionary parts of the Tax Court memorandum that are cited in ROB P. 14-17 should be ruled to be baseless and erroneous.

4) **IRS cites court cases about burden of proof in tax cases that either a) actually make the case for PEYMON, or b) are irrelevant to this case because they were decided before enactment of 26 USC §7491(b) in 1998 which squarely and specifically put the burden of proof on the IRS when using BLS to construct income, as was done in this case on PEYMON AND APRIL.**

ALL of the cases that ROB that claim to allow IRS to use BLS or other indirect method of assessing taxes against people are cases that the taxpayer did NOT cooperate with the IRS, failed to meet and provide documentation or explanation to the IRS during the informal administrative process.

These bulk of these cases are listed in ROB P. 21-22, 27: Cracchila v. Commissioner, 643 643 F.2d 1383, 1385 (9th Cir. 1981), Choi, v. Commissioner, 379 F.3d 638, 640)9th Cir. 2004); Pollard v. Commissioner, 786 F.2d 1063, 1066 (11th Cir. 1986); Giddio v. Commissioner, 54 T.C. 1530, 1533; Page v. Commissioner, 58 F.3d 1342, 1347 (8th Cir. 1995); Jones v. Commissioner, 903 F.2d 1301, 1303 (10th Cir. 1990); Schroeder v. Commissioner, 291 F.2d 649, 653 (8th Cir. 1961); Camprise v. Commissioner, T.C. Memo. 1980-130, 40 T.C.M. (CCH) 211, 217 (1980); Rapp v. Commissioner, 774 F.2d 932, 935 (9th Cir. 1985); Delaney v. Commissioner, 743, 774 F.2d 932, 935 (9th Cir. 1985); Keogh v. Commissioner, 680 F.2d 496, 501 (9th Cir. 1983); Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982); In Brinkley v. Commissioner, 808 F.3d 657, 664 (5th Cir. 2015) and Dubiskey v. Commissioner, 62 F.3d 182, 185 (7th Cir. 1995).

In addition, ALL of the above cases were decided before enactment of 26 USC §7491(b) in 1998 which squarely and specifically and solidly put the

burden of proof on the IRS when using BLS to construct income as it was done by IRS in this case.

Esgar Corp. v. Commissioner, 744 F.3d 648, 654 (10th Cir. 2014); Scheindelman v. Commissioner, 755 F.3d 148, 154 (2d Cir. 2014) are inapplicable to this case because they are both about 26 USC §7491(a), where the burden of showing cooperation is on the taxpayer.

26 USC §7491(a) requires the taxpayer to have "*maintained all records required under this title and* ***has cooperated with reasonable requests*** *by the Secretary* ***for*** *witnesses,* ***information, documents, meetings, and interviews***...". Emphasis added. Therefore, these cases actually make the case for PEYEMON. Why? Because Congress clearly intended BOTH SIDES to **cooperated with reasonable requests for, information, documents, meetings and interviews.**

Congress enacted 26 USC §7491(a) and 26 USC §7491(b) at the same time, with specific intent on burden of proof in certain tax cases, with certain circumstances. In both cases, cooperation of the side with burden of proof was assumed.

In the instant case, the AUDITOR and AUDITOR's manager, despite repeated calls, FAX and letters of PEYMONO AND APRIL repeatedly and deliberately failed to cooperate with reasonable requests of PEYMON AND

APRIL for information, documents and to meet and have in person interviews. See OBP p. 12-32.

It is abundantly clear that the Tax Court made a clear error by avoiding placing the burden of proof as to why IRS used BLS in this case to assess taxes on PEYMON AND APRIL as provided in 26 USC §7491(b). In addition, Tax Court should have found that IRS failed to carry IRS' burden of proof as to why IRS used BLS to reconstruct income for PEYMON AND APRIL.

Now this Court should reverse these errors and set aside all of the taxes and penalties for years 2001 and 2006 against PEYMON AND APRIL.

ROB P.26 cites Hanel v. Commissioner, 6F.App'x 452, 453 (7th Cir. 2001) and claims that "*The use of BLS statistics (sometimes, as here, modified using known actual expenses) has been approved in other unreported income cases.*"[3]

However, *Boisellier, Supra,* is a case was about years 1991 through 1994 and was petitioned to the Tax Court in 1996, which is before enactment of 26 USC §7491(b), therefore *Boisselier, Supra,* has no applicability to the instant case.

Palmer v. Commissioner, 116, 116 F.3d 1309, 1312 (9th Cir. 1997), which ROB relies on and cites the most, is a case that is pre-enactment of 26 USC

[3] The correct name of the case is Boisselier v. Commissioner of Internal Revenue. Hanel was the other party to this case.

§7491(b). So, it is not applicable in the instant case to claim that burden of proof was on PEYMON AND APRIL in this case.

Interestingly, *Palmer, Supra*, noted that "*Internal Revenue Service ("IRS") agents attempted to meet with the Palmers to gather income information, but the Palmers did not attend the scheduled meeting.*" In the instant case, the **reverse is true**: it was the AUDITOR and AUDITOR's manager who "*failed to attend*" or schedule any "*meetings*" with PEYMON AND APRIL.

Therefore *Palmer, Supra,* makes the case for PEYMON that the AUDITOR and AUDITOR's manager's failure to meet with PEYMON AND APRIL was a clear error that the Tax Court failed to hold IRS' feet to IRS' burden of proof in 26 USC §7491(b) and the Tax Court error should be reversed by this Court by abating all tax and penalties for years 2001 through 2006.

Based on the clear failure of AUDITOR and AUDITOR's manger to meet with PEYMON AND APRIL, IRS failed to meet IRS' burden of proving why IRS resorted to the use of BLS to reconstruct income of PEYMON AND APRIL. Therefore, this Court should reverse all of the taxes and penalties for years 2001 through 2006 in this case for IRS failure to meet IRS' burden of proof under 26 USC §7491(b).

The one pre-enactment of 26 USC §7491(b) court case that is cited by ROB which does apply here is Weimerskirch v. Commissioner, 596 F.2d 358. In

Weimerskirch, Supra, where IRS failed to meet the burden of proof in reconstructing income of Weimerskirch. *Weimerskirch, Supra,* cites Elkins v. United States, 364 U.S. 206 (1960) which states that "*As a practical matter it is never easy to prove a negative.*"

ROB wants PEYMON to prove that the BLS numbers are wrong, which proving a negative. In *Weimerskirch, Supra*, "*the Commissioner did not attempt to substantiate the charge of unreported income by any other means, such as by showing Weimerskirch's net worth, bank deposits, cash expenditures, or source and application of funds*."

Similarly, in the instant case, IRS in ROB has failed to disprove the proof provided by PEYMON that the AUDITOR failed to use bank records of PEYMON AND APRIL and meet with PEYMON AND APRIL to discuss those bank records and other records of PEYMON AND APRIL to purify those records to construct income of PEYMON AND APRIL.

Congressional record is clear that Congress intended to make sure people, like PEYMON are not in a place to have to prove their innocence whenever IRS uses BLS to reconstruct income for people, such as PEYMON. The committee Report of the IRS Restructuring and Reform Act of 1998 S. Rep. No. 105-174 under "*Reasons for Change*" and addition of 26 USC §7491(b) states:

"The Committee is concerned that individual and small business taxpayers frequently are at a disadvantage when forced to litigate with the Internal Revenue Service. ***The committee believes that the present burden of proof rules contribute to that disadvantage****. ... The Committee believes that* ***shifting the burden of proof to the Secretary*** *in such circumstances* ***will create a better balance*** *between the IRS and taxpayers without encouraging tax avoidance.*

The Committee believes that it is inappropriate for the IRS to rely solely on statistical information on unrelated taxpayers solely on statistical information on unrelated taxpayers to reconstruct unreported income of an individual taxpayer...." Emphasis added.

Under "*Explanation of Provisions*" the Committee states:

"The provision also provides that in any instance in which the Secretary uses statistical information from unrelated taxpayers ***solely to reconstruct an individual taxpayer's income*** *(such as average income for taxpayers in the area in which the taxpayer lives), the burden of proof is on the Secretary with respect to the item of income that was reconstructed by the Secretary."* Emphasis added.

It is undisputed that the AUDITOR failed to meet with PEYMON AND APRIL, based on AUDITOR's manger's unexplained and arbitrary direction to the AUDITOR to "***Ignore what the publication says. Just move on to the next step. He doesn't have that right to not agree at this time. Just ignore that process; go***

to the next step. He doesn't have that right to not agree at this time. Just Ignore that process; go to the next step." See OBP P. 30.

SUMMARY OF REBUTTAL

In summary, in the ROB:

1) IRS avoids the 26 USC §7491(b) and IRS' burden of proof for using BLS to reconstruct PEYMON AND PEYMON's income by distracting the Court with statements on Freedom Law School's website and First Amendment protected tax and legal opinions of PEYMON on a website and based on the above use conclusionary character assassinations of PEYMON AND APRIL - which all have no relevancy to the facts of this case.
2) IRS attempts to support the baseless factual and legal findings of the Tax Court repeatedly makes a series of claims that that are wholly unsupported by the record or actually refuted by the record.
3) IRS cites Court cases about burden of proof in tax cases that either a) actually make the case for PEYMON, or b) are irrelevant to this case because they were decided before enactment of 26 USC §7491(b) in 1998 which squarely and specifically put the burden of proof on the IRS when using BLS to construct income, as was done in this case on PEYMON AND APRIL.

4) IRS cites court cases about burden of proof in tax cases that either a) actually make the case for PEYMON, or b) are irrelevant to this case because they were decided before enactment of 26 USC §7491(b) in 1998 which squarely and specifically put the burden of proof on the IRS when using BLS to construct income, as was done in this case on PEYMON AND APRIL.

IRS concedes that The Tax Court made clear, reversable error in the ways listed below:

I. IRS concedes that failure of the Tax Court to apply the 26 USC §7491(b) burden of proof issue is the central issue of this case and that IRS failed to carry IRS' burden of proof under 26 USC §7491(b) issue by simply failing to address and refute Appellant's undisputed facts on this issue.

II. IRS concedes that since substantial amounts of bank and other financial records and income were available to IRS to reconstruct income of PEYMON AND APRIL that IRS should have met with PEYMON AND APRIL to purify and use thee bank and financial records to arrive at income amounts for PEYMON AND APRIL.

III. By not citing anything in the record to refute the facts cited by PEYMON IRS concedes that IRS failed to meet with PEYMON AND APRIL to go over bank

and financial records of PEYMON AND APRIL, thereby denying PEYMON AND APRIL the opportunity to present and explain financial records to the IRS,.

IV. IRS fails to refute ANY of the Court cases cited by PEYMON, their language, applicability or conclusions that relate to this case, therefore IRS admit that all of the cases cited by PEYMON are cited correctly, in context, properly and applicable to this instant case the way PEYMON has presented those court cases.

CONCLUDING SUMMARY

1) Congress placed the burden of proof on the IRS whenever the IRS chooses to employ BLS or other unrelated taxpayer statistics to reconstruct income to assess taxes, as the IRS attempted to do in this case. The IRS failed to carry this burden and the US Tax Court's evasion of this issue is a clear reversible error.

2) AUDITOR had bank deposit records of PEYMON AND APRIL that AUDITOR miscalculated at only "*10, 15 to 20, 25 thousand dollars*" of yearly bank deposits of PEYMON AND APRIL, when the actual amounts of the bank deposits were **mostly over $41,986** and as much as **$88,405**. Failure of AUDITOR to use the bank deposit records of PEYMON AND APRIL and instead use unrelated taxpayer statistics from BLS to impute taxable income for PEYMON AND APRIL was in error. Tax Court's failure to rule that the

IRS had failed to meet the burden of proof by using unrelated taxpayer statistics from BLS to calculate taxable income of PEYMON AND APRIL was a clear reversible error.

3) The IRS's AUDITOR and MANAGER's:

   a. Deliberate refusal to return PEYMON AND APRIL's calls;

   b. Deliberate refusal to respond to APRIL AND PEYMON's FAX, letters to AUDITOR and MANAGER asking AUDITOR and MANAGER to meet with PEYMON AND APRIL to review and "*purify*" PEYMON AND APRIL's over 726 pages of bank and financial records of PEYMON AND APRIL to calculate PEYMON AND APRIL's income and taxes; and

   c. Violating all the IRS internal audit meeting and appeal procedures and taxpayer rights publications as published in the IRS letters and materials that were mailed to PEYMON AND APRIL and which said that PEYMON AND APRIL had a right to meet with AUDITOR and MANAGER to review the tax audit proposals of the IRS

denied PEYMON AND APRIL's "*opportunity to defend*" to be able to modify or dispute IRS tax proposals administratively was error and negated any excuse the IRS may have had to use unrelated taxpayer statistics from

BLS to impute taxes on PEYMON AND APRIL for tax years 2001 through 2006.

4) Failure of the US Tax Court to hold the burden of proof on the IRS for using unrelated taxpayer statistics from BLS instead of purified bank deposits analysis which the IRS should have used in this case is a clear reversible error and requires a reversal of the MEMO and Decision of the US Tax Court and abatement of all taxes and penalties for years 2001 through 2006 that were unlawfully assessed on PEYMON.

CONCLUSION

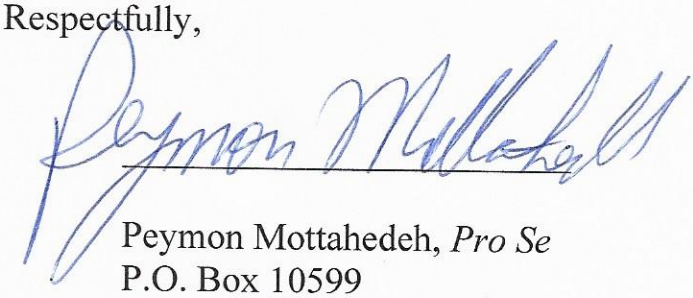
WHEREFORE, this Court should rule that:

1. The IRS failed to meet the IRS's burden of proof per 26 USC §7491(b) for using unrelated taxpayer statistics from BLS instead of PEYMON AND APRIL'S bank and financial records and to meet with PEYMON AND APRIL to calculate income and taxes on PEYMON AND APRIL; and
2. Failure of the US Tax Court to rule that the IRS failed to meet IRS's burden of proof in using unrelated taxpayer statistics from BLS instead of PEYMON AND APRIL'S bank records and meeting with PEYMON ND APRIL to calculate taxes on PEYMON AND APRIL is a clear reversible

error and all taxes and penalties assessed for years 2001 through 2006 on PEYMON should be abated.

Dated: June 14, 2022

Respectfully,



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CERTIFICATE OF SERVICE

This is to certify that I filed the foregoing with the Clerk for the United States Court of Appeals for the Ninth Circuit by emailing all documents to the clerk at prose-pleadings@ca9.uscourts.gov on the date listed below:

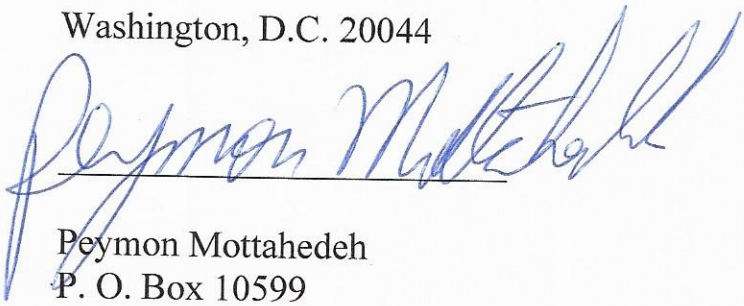
REPLY BRIEF OF APPELLANT

I hereby certify that all participants in the case are registered CM/ECF users but Appellant's request for E-filing was rejected because at the time of this filing the case showed "inactive".

Therefore, Appellant emailed the Clerk of Court as noted above and served Appellee by mailing the above described document on

June 14, 2022, by First Class addressed as follows:

CURTIS C PETT, Attorney
United States Department of Justice/ Tax Division
Appellate Section
P.O. Box 502
Washington, D.C. 20044



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Dated: June 14, 2022