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UNITED STATES TAX COURT

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UNITED STATES TAX COURT
INTAKE # 4

FILED
U.S. TAX COURT
STEPHANIE A. SERVOSS, CLERK

(FIRST) (MIDDLE) (LAST)
Craig J Schieder
(PLEASE TYPE OR PRINT) Petitioner(s)

2020 FEB 28 PM 12:40

2020 FEB 28 PM 12:44

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

BY: 
DEPUTY CLERK

BY: 
DEPUTY CLERK

PETITION

4048-20

1. Please check the appropriate box(es) to show which IRS ACTION(S) you dispute:

- Notice of Deficiency
- Notice of Determination Concerning Collection Action
- Notice of Final Determination for [Full/Partial] Disallowance of Interest Abatement Claim (or Failure of IRS to Make Final Determination Within 180 Days After Claim for Abatement)*
- Notice of Determination of Worker Classification*
- Notice of Determination Concerning Relief From Joint and Several Liability Under Section 6015 (or Failure of IRS to Make Determination Within 6 Months After Election or Request for Relief)*
- Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State
- Notice of Determination Under Section 7623 Concerning Whistleblower Action*

*For additional information, please see "Taxpayer Information: Starting a Case" at www.ustaxcourt.gov (accessible by hyperlink from asterisks above, or in the Court's information booklet).

2. If applicable, provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): Notice of Deficiency issued on 11/27/2019 from the IRS Ogden, UT 84201 Office

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: Tax year ending December 31, 2017

4. SELECT ONE OF THE FOLLOWING (unless your case is a whistleblower or a certification action):

If you want your case conducted under small tax case procedures, check here: (CHECK
If you want your case conducted under regular tax case procedures, check here: ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

See Attachment

6. State the facts upon which you rely (please list each point separately):

See Attachment

You may use additional pages to explain why you disagree with the IRS determination or to state additional facts. Please do not submit tax forms, receipts, or other types of evidence with this petition.

ENCLOSURES:

Please check the appropriate boxes to show that you have enclosed the following items with this petition:

- A copy of any NOTICE(S) the IRS issued to you
- Statement of Taxpayer Identification Number (Form 4) (See PRIVACY NOTICE below)
- The Request for Place of Trial (Form 5) The filing fee

PRIVACY NOTICE: Form 4 (Statement of Taxpayer Identification Number) will not be part of the Court's public files. All other documents filed with the Court, including this Petition and any IRS Notice that you enclose with this Petition, will become part of the Court's public files. To protect your privacy, you are strongly encouraged to omit or remove from this Petition, from any enclosed IRS Notice, and from any other document (other than Form 4) your taxpayer identification number (e.g., your Social Security number) and certain other confidential information as specified in the Tax Court's "Notice Regarding Privacy and Public Access to Case Files", available at www.ustaxcourt.gov.

Craig J. Schieder 2/20/2020
 SIGNATURE OF PETITIONER DATE
 705 Moore Ave

(716) 748-5730
 (AREA CODE) TELEPHONE NO.
Buffalo, NY 14223
 CITY, STATE, ZIP CODE

Address Used By Court

State of legal residence (if different from the mailing address): _____ E-mail address (if any): cschieder@verizon.net

 SIGNATURE OF ADDITIONAL PETITIONER (e.g., SPOUSE) DATE

 MAILING ADDRESS

 (AREA CODE) TELEPHONE NO.

 CITY, STATE, ZIP CODE

State of legal residence (if different from the mailing address): _____ E-mail address (if any): _____

 SIGNATURE OF COUNSEL, IF RETAINED BY PETITIONER(S) NAME OF COUNSEL DATE

 TAX COURT BAR NO. MAILING ADDRESS, CITY, STATE, ZIP CODE

 E-MAIL ADDRESS (AREA CODE) TELEPHONE NO.

1

ATTACHMENT TO PETITION

In support of the Petition of Craig J. Schieder ("Petitioner"), and answering question numbers 5 and 6 on the simplified Petition form filed by Petitioner through US Certified Overnight mail (tracking number 70191640000084945606) on February 24, 2020 ("Petition"). Petitioner states the following facts on which they rely, followed by separate assignments of error and affirmative defenses:

STATEMENT OF FACTS

1. At the time of the filing of this Petition, Petitioner resides at 705 Moore Ave in the County of Erie, in the City of Buffalo, New York, USA.

2. Petitioner filed his 2017 Form 1040 tax return on December 28, 2018. A genuine copy of Petitioner's complete return is attached here to and marked Exhibit "A"

3. Petitioner's 2017 Form 1040 return included Form 4852 correcting an erroneously filed Form W2 and documents correcting four (4) erroneously filed 1099-MISC information returns, and showed, in fact, the Petitioner had no tax liability whatsoever for the year 2017.

4. Petitioner's 2017 Form 1040 return showed an overpayment of withholding taxes.

5. Petitioner received letter "LTR 3176C" dated March 29, 2019 from Respondent asserting Petitioner's 2017 Form 1040 return was "Frivolous" based on IRC §6702. Respondent's letter requested a response

within 30 days from Petitioner. A genuine copy of the 2017 LTR 3176C is attached here to and marked as Exhibit "B."

6. Petitioner received Notice CP49 dated April 1, 2019 from Respondent the following day stating the IRS processed the Petitioner's aforementioned 2017 Form 1040 and Respondent's Notice CP49 shows a return of all withholdings as expected, in accordance with the information provided on the Petitioner's 2017 Form 1040. A genuine copy of Notice CP49 is attached here to and marked as Exhibit "C."

7. In accordance with Respondent's "Frivolous" Assertion Letter, Petitioner mailed a response, dated April 15, 2019, disputing the "Frivolous" assertion made by the Respondent, and asking for meaningful clarification as to what information in the 2017 Form 1040 was construed as "Frivolous," considering Respondent refunded all requested withholdings one day after Respondent issued their vague assertion of a "Frivolous" 2017 return. Petitioner's request for meaningful clarification was ignored. A genuine copy of Petitioner's response letter is attached here to and marked as Exhibit "D."

8. Respondent mailed Notice CP504 on August 5, 2019 notifying Petitioner of a \$5000 Civil Penalty for the filing of Petitioner's alleged "Frivolous" 2017 Form 1040 Return despite the Respondent's inconsistent action of returning all withholdings of the aforementioned 2017 "Frivolous" 1040 return. A genuine copy of Notice CP504 is attached here to and marked as Exhibit "E."

9. Petitioner mailed a request for a hearing under 26 USC §6320 dated August 15, 2019 in response to Respondent's Notice CP504. Petitioner's response requested that Respondent provide a copy of the record of assessment for 2017 as is allowed by the provisions of 26 USC §6203, and requested a hearing under 26 USC §6320. These requests were completely ignored by Respondent again.

10. Respondent mailed A Notice CP2000 to Petitioner dated October 3, 2019, which listed a "Proposal of Changes" to Petitioner's accurately filed 2017 Form 1040 return.

11. In accordance with the Respondent's Notice CP2000 demand for response, Petitioner responded via certified mail dated October 28, 2019, stating that Petitioner DID NOT agree with ANY of the changes proposed by Respondent, and included all necessary supporting information including copies of all documents & forms correcting the erroneous information returns included in the 2017 Form 1040 filing, with jurat statements sworn to under penalty of perjury.

A genuine copy of Petitioner's response to Respondent's "Proposed Changes" notice is attached here to marked as Exhibit "F" and copy of Petitioner's Certified Mail Receipt with USPS tracking number 7019 1640 0001 7174 5058 showing Respondent received it at 12:25 pm on November 1, 2019 at the IRS facility in OGDEN, UT 84201 is attached here to marked as Exhibit "G."

12. Respondent mailed to Petitioner a Letter 3219 (SC/CG) entitled "Notice of Deficiency," dated November 27, 2019, issued by the Office

of Internal Revenue Service in Ogden, UT. A genuine copy of the NOD Letter 3219 (SC/CG) is attached here to and marked as Exhibit "H."

13. The alleged deficiency stated in the NOD Letter 3219 (SC/CG) is for Federal income taxes and penalties for the year ending December 31, 2017 in the amounts listed as follows:

a. Alleged Income Tax Deficiency	\$30,963.00
b. Penalty pursuant to IRC §6662(a)	\$ 6,192.00
c. Penalty pursuant to IRC §6651	\$ 2,924.55
d. Penalty pursuant to IRC §6651(a)(2)	\$ 1,299.80
e. Interest Penalties IRC §6601	\$ 3,446.28

14. The Civil Penalty imposed is for the alleged "Frivolous" 2017 Form 1040 which was filed, processed, and refunded on April 1, 2019 and considered closed, is in the amount as follows:

a. "Frivolous" Civil Penalty	\$5,000.00
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15. All of said amounts listed in above lines 13 and 14 are disputed and unsubstantiated.

16. Petitioner was rightfully refunded all requested amounts of overpayments of 2017 withholdings on April 1, 2019, in accordance with the Petitioner's 2017 Form 1040 filing showing No Tax liability, despite Respondent's assertion of the same 2017 1040 return as "Frivolous," dated March 29, 2019, one day prior to Respondent's complete refund of Petitioner's 2017 withholdings.

17. All responses made by the Petitioner with requests for meaningful clarification as to the nature of the Respondent's allegations were ignored.

18. Petitioner was not negligent, nor did Petitioner knowingly or negligently disregard any rules or regulations governing the preparation of the tax return for the year 2017.

19. Petitioner was not careless or reckless in the preparation of his tax return and did not intentionally disregard any tax rules or regulations.

20. Petitioner is not liable for any amount whatsoever of the alleged deficiency in income taxes and penalties as set forth by Respondent in the NOD for the year 2017.

21. Petitioner is not liable for any amount whatsoever of the unsupported alleged "Frivolous" Return Civil Penalty imposed and set forth by the Respondent.

22. No underpayment of the Petitioner's Federal income tax liabilities exists as determined by Respondent in the NOD for year 2017.

23. Petitioner alleges that the following errors have been committed by Respondent in the determination of aforementioned imposed "Frivolous" Civil Penalty, and deficiencies as set forth in said NOD.

ASSIGNMENT OF ERRORS

a. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

a. After the Petitioner's 2017 Form 1040 was received by the Respondent, the Petitioner's 2017 1040 return was correctly processed and the requested overpayment of all withholdings for 2017 was returned as expected, based on the Petitioner's properly corrected information returns. Subsequently however, the Respondent maliciously made a factual, justiciable error and ignored the amended information returns previously referenced by Respondent to process and refund the 2017 Form 1040 return, and manufactured false deficiencies based upon amounts shown on the refuted, admittedly erroneous, overridden, disputed original information returns.

b. Respondent erred in using amounts from erroneously filed third party information returns which were clearly rebutted as "Bad Payer Data," and were corrected and replaced by Form 4852 and corrected Forms 1099-MISC for the year 2017.

c. Respondent is without authority to ignore or override the Form 1040, Form 4852, and corrected 1099-MISC information return declarations properly submitted and sworn to under penalty of perjury.

d. Without the erroneous information shown on the original information returns, the IRS has no basis for concluding IRC § 61 taxable gross income or an IRC § 1 assessment.

e. Since the information returns upon which Respondent has based claims of taxable income are disputed, Respondent bears the burden of "producing reasonable and probative information concerning

such deficiency in addition to the information returns." 26 USC §6201(d). Furthermore, the above said information return is hearsay evidence as it is not signed under penalty of perjury and therefore is excludible under the Hearsay Rule, Federal Rule 802.

f. Respondent, despite several requests by Petitioner, has failed to provide any meaningful clarification as to its claim of Petitioner's taxable income, Respondent has thus far failed to respond to requests to provide contradictory evidence or any proof disputing Petitioner's testimony stating NO taxable income, set forth on the 2017 Form 1040 return and sworn to under penalty of perjury, or point out a single flaw in the Petitioner's 2017 Form 1040 return

g. Despite the Petitioner's repeated requests for meaningful clarification in regards to Respondent's "Frivolous" assertion of Petitioner's 2017 Form 1040 return, Respondent has thus far failed to respond to requests to produce such evidence.

h. Respondent's attempts to ignore Petitioner's declarations on all aforementioned 2017 information returns, submitted under penalty of perjury is a blatant abuse of power and is nothing less than an attempt at extortion of these funds.

i. Respondent erred in determining that there is a deficiency in Federal income tax for Petitioner for 2017 in any amount whatsoever;

j. Respondent erred in determining that there are penalties pursuant to Internal Revenue Code (IRC) §6663 in any amount whatsoever;

k. Respondent erred in determining that Petitioner has an underpayment of tax for tax year 2017 in any amount whatsoever;

1. Petitioner prays that the deficiencies for the year 2017 be rightfully redetermined to reflect the correct tax liability of zero, as was originally processed prior to the Respondent's blatant disregard for properly corrected information returns.

2. The facts upon which the petitioner relies, as the basis of the petitioner's case, are as follows:

a. Form 1040 for calendar year 2017 was mailed on December 28, 2018 and was received, processed, and subsequently refunded all amounts that were withheld on April 1, 2019, approximately seven months before the notice of deficiency.

b. To Form 1040 was attached four (4) corrected 1099-MISC Forms, rebutting and correcting four (4) 1099-MISC Forms submitted by a payer erroneously alleging payments to Petitioner of "gains, profit, or income" made in the course of a "trade or business".

c. Each corrected Form 1099-MISC contained a statement signed by Petitioner under penalty of perjury, stating that the corrected 1099-MISC information return was true, correct, and complete, to the best of Petitioner's knowledge and belief.

d. The 2017 Form 1040 indicated that there was no taxable income or tax liability for the calendar year, and claimed a refund of the overpayment.

f. Despite Petitioner's repeated requests for meaningful clarification in regards to Respondent's claim of Petitioner's taxable income, Respondent has thus far failed to respond to requests to produce such evidence.

g. Despite Petitioner's repeated requests for meaningful clarification in regards to Respondent's baseless assertions of a "Frivolous" return, Respondent has thus far failed to respond to requests to produce such evidence.

AFFIRMATIVE DEFENSES

1. PETITIONER FURTHER ALLEGES, as and for a separate affirmative defense, that, as to the tax year 2017, Respondent's NOD fails to state a claim on which relief can be granted. In support of this affirmative defense, Petitioner relies on, realleges, and incorporates by this reference as if fully set forth herein, Affirmative Defense Nos. 1 through 5 and the facts alleged or incorporated therein; above

2. PETITIONERS FURTHER ALLEGE, as and for a separate affirmative defense, that Respondent acted maliciously and outside of its authority in a continued attempt to collect taxes on payments to the Petitioner that were clearly shown to be private and non-taxable in nature, as stated in the documents contained in Petitioner's 2017 Form 1040 return

which was sworn to be true, correct and complete under penalty of perjury.

3. For the tax year 2017, the burden of proof relating to alleged income is on Respondent, which has not been met.

4. For the tax year 2017, the burden of proof relating to any allegations of fraud are on Respondent.

5. For the tax year 2017, the burden of production and proof relating to proposed penalties is on the Respondent and has not been met.

6. Respondent sent a letter purporting to be a "notice of deficiency", although it did not meet the status of a "statutory notice of deficiency" as contemplated by 26 USC §6330(c)(2)(B). That section states:

B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not **otherwise** have an opportunity to dispute such tax liability.

It is clear from the inclusion of the word **otherwise** that Congress intended that a statutory notice of deficiency provide the recipient with a clearly communicated opportunity to challenge the existence or amount of the underlying tax liability for any tax period in an appropriate venue. Any document purporting to be a statutory notice of

deficiency that does not communicate such an opportunity does not comply with the statute, and thus is not a "statutory" notice of deficiency.

This statutory requirement is reflected in the Internal Revenue Manual. Part 1 of Section 4.14.1.6 (10-30-2004) states that a notice of deficiency includes the following information:

The notice of deficiency is a legal determination that is presumptively correct. The notice of deficiency consists of:

- a letter explaining the purpose of the notice, the amount of the deficiency **and the taxpayer's options**,
- a waiver if the taxpayer should decide to agree to the additional tax liability,
- a statement showing how the deficiency was computed, and
- an explanation of the adjustments.

Compliance with the Internal Revenue Manual requires that all of the options appropriate for the "taxpayer" must be explained in a true "notice of deficiency".

The Letter 3219(SC/CG) sent to Petitioner fails to explain all of the options available to Petitioner. In fact, the Letter 3219(SC/CG) makes no mention of requesting an Appeals Conference for the purpose of disputing the alleged underlying tax liability. The failure of the Letters 3219(SC/CG) to conform to the Internal Revenue Manual's requirements for a notice of deficiency deprived Petitioner of a critical element of due process of law that Congress intended to be provided, that being the opportunity to challenge the existence or

amount of the underlying tax liability. Thus, the Letter 3219(SC/CG) does not meet the criteria of a "statutory notice of deficiency", and is in error. **Even if the Letter 3219(SC/CG) did constitute a valid "statutory notice of deficiency", Respondent violated administrative procedures by issuing it.**

Although the Letter 3219(SC/CG) did mention the option of contesting the notice of deficiency in Tax Court, this was not an appropriate remedy for the Petitioner, for the reasons that follow.

a. The term "deficiency" is defined in 26 USC 6211(a) as being, to condense a tediously lengthy formula, the difference in the amount of tax declared on a return and the amount of tax imposed by Subtitle A or B, or chapter 41, 42, 43, or 44. A "deficiency" does not contemplate the initial amount of income declared on a return, but rather, the calculation of tax on the income declared.

b. There is actually no "deficiency" at issue for the 2017 tax period, or at least, no facts have been presented to Petitioner to suggest that there is. What **has been** at issue, at least since Petitioner filed his return, is whether the Respondent is obligated under Section 93 of the Revenue Act of 1862 (now restated with no substantive change in meaning in Section 3173 of the Revenue Act of 1873, as amended in 1919) to receive the amount of annual income liable to be assessed as declared by Petitioner under penalty of perjury on his 2017 income tax return.

c. The jurisdiction of the Tax Court is limited to matters involving the determination of the correct amount of tax due based on the proper application of the rate of tax, and the allowability of claimed deductions, and does not include the issue of the initial amount of income to which the tax is applied, or from which deductions may or may not be allowed.

Petitioner was mindful of this Court's specific jurisdiction when he received the NOD Letter 3219(SC/CG). Petitioner also knew full well that a true "deficiency" was a legal impossibility until Respondent affirmatively and explicitly asserted some legal defect with Petitioner's returns. Respondent in fact, acted to the contrary by processing the Petitioner's 2017 1040 return and refunding all withholdings due, in accordance with the information provided by and sworn to under penalty of perjury by the Petitioner. Respondent has never made any such specific assertion of legal defect with Petitioner's return or included any meaningful clarification, or if it has, it has not done so with sufficient clarity to enable Petitioner to remedy the defect.

Internal Revenue Manual Section 4.14.1.3 (10-30-2004) sets forth the criteria for issuance of a notice of deficiency. A notice of deficiency may be issued when the:

- expiration of the statute of limitations is imminent and no extension can be obtained,

- taxpayer does not file a valid protest in response to a 30-day letter **or fails to respond to a 30-day letter**, or

- taxpayer requests the issuance of the notice in order to petition the case to the Tax court

(Emphasis added.)

On October 28, 2019, Petitioner mailed his response to Respondent's notice dated October 3, 2019. Respondent's notice requested that Petitioner respond within thirty days from the date of the letter. Proof of Petitioner's timely reply and Respondent's receipt of reply was provided as shown by the certified mail receipt marked "Exhibit G." **Because Petitioner did not fail to respond to the 30-day letter, the Internal Revenue Manual's criteria for issuance of a notice of deficiency was never met**

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court issue an order

a. finding that Respondent's determinations are erroneous and without merit and/or that there is no tax, penalties or interest due whatsoever from Petitioner for the year 2017 herein involved;

b. finding that the alleged imposed "Frivolous" Civil Penalty of \$5,000.00 plus interest be found to be erroneously assessed and without merit by Respondent on Petitioner's 2017 1040 Return and dismissed

c. finding Petitioner did not fail to respond in the time allotted to the 30-day letter issued by Respondent on October 3, 2019, therefore, the Internal Revenue Manual's criteria for issuance of a notice of deficiency was never met, and hence should be dismissed

c. awarding such other and further relief for Petitioners as may be deemed just and proper.

d. promptly issue closing notice consistent therewith, and award and return to Petitioner all monies belonging to Petitioner presently in the custody of the United States, including accrued interest thereon as provided by law.