PEYMON MOTTAHEDEH & APRIL MOTTAHEDEH
Petitioner(s)

ELECTRONICALLY FILED

v.

Docket No. 22039-11

COMMISSIONER OF INTERNAL REVENUE,
Respondent

FIRST AMENDED MOTION FOR RECONSIDERATION OF FINDINGS OR OPINION PURSUANT TO RULE 161

UNITED STATES TAX COURT
Washington, DC 20217

PEYMON & APRIL MOTTAHEDEH,	)	
	)	
Petitioners,	)	
	)	Docket No. 22039-11
v.	)	
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	Electronically filed
	)	
Respondent.	)	

PETITIONERS' AMENDED MOTION TO RECONSIDER THE COURT'S MEMORANDUM OPINION

(Motion Amended Pursuant to Rule 41)

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PETITIONERS' MOTION TO RECONSIDER THE COURT'S MEMORANDUM OPINION (Amended Motion Pursuant to Tax Court Rule 41(a))

Peymon Mottahedeh and April Mottahedeh, PETITIONERS herein, through their counsel, Lowell H. Becraft, Jr. hereby file their motion to reconsider the court's Memorandum Opinion (hereafter "MEMO").

Preliminary Statement

This case is a Notice of Deficiency case for years 2001 through 2006. Trial was conducted on September 18-19 and November 4-5, 2013 in Los Angeles, California before Judge Richard T. Morrison.

The record in this case consists of: (1) Pleadings filed by the parties; (2) RESPONDENT'S request for admissions; (3) Stipulation of facts which consists of Exhibits 1-J through 20-J; (4) supplemental stipulation of facts that includes Exhibits 21-J through 25-J; (5) Exhibits entered into evidence during trial, which include Exhibits 26-J through 29-J, 33-P, 34-P, 36-P, 38-P, 39-P, 42-P and 43-P; (6) Exhibits 45-P through 49-P as described in Court's order of February 20,

2014; and (7) testimony of PETITIONER, Peymon Mottahedeh (hereafter, "PEYMON"), RESPONDENT's Revenue Agent Christiane Thai, RESPONDENT's Revenue Officer, John Black, Leonard Magness, Edgar Lucidi and Katherine Hathaway.

Glossary of Terms

"Tr." refers to a page in the trial transcript of this case.

"Ex." refers to an exhibit received into evidence in this case.

"F.F." refers to a numbered finding of fact.

All references to the "IRS Code Section" are abbreviated as "Section" followed by the applicable Code Section.

All references to an Internal Revenue Manual, are hereby abbreviated as "IRM Section" followed by the applicable IRM Section.

All exhibit pages and transcript pages are bolded for the Court's convenience.

All dates, court cases, statutes, codes, IRM section and legal authorities are underlined to have them stand out for the Court's convenience.

Overview

This case is an unreported income case. RESPONDENT alleges that RESPONDENT chose to primarily use Bureau of Labor Statistics ("BLS"), with very minor modifications, such as alleged home ownership numbers, as the methodology for attributing unreported gross income derived from business to PETITIONER PEYMON. RESPONDENT then attributed half of these alleged BLS taxable income numbers to PETITIONER April Mottahedeh ("APRIL") under California Community Property Laws and issued Notices of Deficiency against both

PETITIONERS (collectively called "PETITIONERS"). PETITIONERS filed the instant petition, and this court has jurisdiction to review these Notices of Deficiency ("NODS".)

Petitioner, PEYMON is the President of Freedom Law School ("FLS"). Petitioner APRIL, married PEYMON on June 24, 2001, 11 days after APRIL's divorce finalized from APRIL's ex-husband on June 13, 2001.

Freedom Law School is a part of Freedom Church ("FC"). Freedom Church as a church or non-profit organization has not been in anyway interviewed or questioned by RESPONDENT. FC's address is in Tustin, Orange County, California. FLS is located in Phelan, California, where PETITIONERS resided from the end of 2001 through the end of 2006. Phelan is an unincorporated rural town located over an hour drive outside of Los Angeles and Orange Counties, California.

On January 25, 2008 an IRS auditor named Christiane Thai ("AUDITOR") was assigned to investigate PETITIONERS for years 2001 to 2006. The AUDITOR gathered some poorly organized and lightly reviewed material that previous IRS employees had obtained regarding the PETITIONERS. The AUDITOR received substantial bank deposit records of PETITIONERS, but incorrectly added them up. The AUDITOR erroneously added the bank deposits of PETITIONERS and repeatedly refused to meet with PETITIONERS to discuss the audit. Instead, the AUDITOR claimed to have used the BLS with minor modifications to reconstruct PETITIONERS income.

The AUDITOR, against the direction of RESPONDENT'S COUNSEL and the IRM, ignored the statistical information posted on the BLS website, and chose instead to use IRS software claimed to be derived from BLS statistics.

Court's errors that require reversal.

I. The court erred by not applying the burden of proof that Section 7491(b) places on RESPONDENT when applying third party statistical information to impose taxes on PETITIONERS.

II. Bank Deposits are prima facia proof of income. The court's holding that RESPONDENT could discard the Bank Deposit Method which was readily available to the RESPONDENT and instead the use BLS was error.

III. The record shows that PETITIONERS repeatedly called and wrote the AUDITOR and her manager to discuss the tax proposals of the AUDITOR, but the AUDITOR refused to meet with the PETITIONERS. Therefore, the court erroneously ruled that the use of alleged BLS numbers was the last resort of the AUDITOR.

IV. The Court erroneously ruled that Freedom Law School is a "business" of PETITIONERS and therefore any income of the Freedom Rallies/Seminars was attributable to PETITIONERS. The undisputed record proves that in actuality Freedom Law School is not a business of either PETITIONER, but an auxiliary of Freedom Church, which is located at a different location than PETITIONER's address.

V. The Court erroneously ruled that PETITIONERS had "businesses", and that half of the income of these "businesses" was attributable to PETITIONER APRIL. These conclusions of the court are not supported by anything in the record.

VI. The court made many erroneous findings of fact to reach its conclusion that APRIL had half ownership of Freedom Law School and that PETITIONERS owned property; these findings should be reversed.

VII. The conclusion of the court based on the unsupported claim of the AUDITOR and her numbers that the AUDITOR actually employed is error and contradicted by actual BLS website numbers.

VIII. This court made the same error as the Tax Court in Weimerskirch v. Commissioner, *infra*. In Weimerskirch, the Tax Court, in its effort to "get a drug dealer to pay his taxes", relied on hearsay to erroneously rule against Weimerskirch. In the instant case, the Court likened some essay written by PEYMON as a "promoter of tax evasion", and based on that erroneous conclusion and without any support in the record and against the evidence in the record, ruled against PETITIONER.

After a listing of some findings of fact, ll of these errors and findings of fact will be described below in the section headlined "ERRONEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE MEMO" followed by the corrected F.F. that is based on admissible evidence in the record.

I. The court erred by not applying the burden of proof that Section 7491(b) placed on RESPONDENT when applying third party statistical information to impose taxes on PETITIONERS.

In the 1998, Congress enacted the 1998 IRS Restructuring and Reform Act. One of the provisions of this act is Section 7491(b) which states: "*In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to* ***any item of income*** *which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers*." Emphasis added.

This is a case of first impression that requires a proper, detailed analysis to create a well-reasoned and thoughtful precedent for future cases. This case of first impression deserves the court's close scrutiny and well-thought-out discussion.

The proof that IRS must meet in Section 7491(b) is to prove any item of "*income*". In this case, "*the item of income*" is the "taxable income" of PETITIONERS, not the expenditures of the PETITIONERS. The various items of expenditure, such as food, clothing, insurance, et cet, that RESPONDENT used to reconstruct PETITIONERS "*taxable income*" are not separate items of income. All of these expenditures *added up together* comprise one item, namely, the taxable income of PETITIONERS. Section 61 provides:

> "**(a) General definition-** Except as otherwise provided in this subtitle, gross income means **all income from** whatever source derived, including (but not limited to) the **following items**:
> **(1)** Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust." Emphasis added.

RESPONDENT never asserted that any of these separate items of expenditures were derived from any specific item of income such as dividends, interest, commissions, royalties or any of the other items of income listed in Section 61. RESPONDENT and the court's ruling assert that ALL of the expenditures that RESPONDENT used were all added up to **only one item of income** of PETITIONERS, namely, item (I) of Section 61,"*Gross income derived from business*" where the court also on **page 21** of the MEMO states, "*we hold that the income from the couple's businesses was community property ....*"

In addition, the court on **pages 5 and 24** concluded that "*Peymon Mottahedeh operated a business called 'Freedom Law School'*", and "*the record establishes that the couple's businesses were joint efforts.*" The court also believed that the item of income that RESPONDENT had used to presume taxable income to the PETITIONERS was **item number 2** of Section 61, "*Gross income derived from business.*"

Therefore, RESPONDENT had the burden of proof as to why RESPONDENT had no other choice but to allegedly use BLS to reconstruct PETITIONERS "Gross income derived from business."

While the court recognized in **footnote 13** on **page 15** of the MEMO the PETITIONER'S position in this respect, "*Mottahedeh's contend that sec. 7491(a) and ((b) imposes the burden of proof on the IRS*", it erroneously concluded "*Therefore, we need not consider whether the IRS has the burden of proof.*"

The citation of the court to Estate of Bongard v. Commissioner, 124 T.C. 95 was misplaced. *Bongard, supra*, did not state that by Sections 7491(a) and (b), the court may ignore its clear command and instead, by judicial fiat, decide the case by a preponderance of evidence as done here.

The MEMO should be reversed for the clear failure of the Court to impose the burden of proof on RESPONDENT as required by the clear and unambiguous language of Section 7491(b).

II. Bank Deposits are prima facia proof of income. The court's holding that RESPONDENT could discard the Bank Deposit Method which was readily available to the RESPONDENT and instead the use BLS was error.

RESPONDENT'S AUDITOR in the course of her investigation was provided bank records of PETITIONERS by revenue officer John Black ("BLACK**".) Exs. 8, 9, 44-P, 45-P (P. 107), Tr. 155-156, 446, 674-676**. The February 13, 2008 notes of the AUDITOR state: "*Met with collection officer, John Black. Reviewed files and made copies of related files.*"

AUDITOR testified at trial about her erroneous reasons for not using the bank deposit method (**Tr. P. 154-155)**:

"*Q So you received all of these bank records. Did you do a bank deposit analysis of these records?*

A Yes, I did.

Q Did you use it?

A No I did not because –

Q and why not?

A Because the deposits were not sufficient for me to determine their income.

...

Q Okay. So from all the documentation that you gathered, was all that sufficient to determine Petitioner's income?

A No, they were not.

Q And why not?

*A **That's because … Bank deposit analysis for each year from 10, 15 to 20, 25 thousand dollars.*** " Emphasis added.

However, the bank deposit totals of PETITIONERS for each year was $11,619.94 for 2001, $74,564.57 for 2002, $41,986.59 for 2003, $27,775.21 for 2004, $37,823.41 for 2005, and $44,973.71 for 2006. The highest amount of bank deposits according to the AUDITOR was $25,000, yet the bank deposits for 5 out of the 6 years at issue ranged anywhere from **$27,775.21 through $74,564.57**. See **Exs. 8, 12, 44-P, 45-P (P. 107)** which are BLACK's

calculation of total deposits of PETITIONERS bank accounts. Also see **Exs. 8 and 12**, which are over 800 pages of actual bank records of PETITIONERS, which are over 4 inches in width, which the Court can add to verify that BLACK'S bank deposit totals are correct and the AUDITOR'S numbers are **grossly incorrect**.

For about 5 months, from May 18, 2010 through November 15, 2010, the AUDITOR "*Scheduled out*" "*seminar events*", "*expenses*" and "*deposited items*" related to the bank records of PETITIONERS. See **Ex. 31-R**, (AUDITOR'S activity record), bottom of **page 3** and to **page 4**.

Therefore the testimony of the AUDITOR that the bank deposits of PETITIONERS "*were not sufficient to support a family of four or five to live in California*" and that "*I had no choice ... so I used BLS"* (**Tr. P. 155, Line 8 – 21**), was insufficient for the court to conclude on **page 18,** that "*Their bank records would not provide sufficient information about their income*". The AUDITOR could and should have used the bank deposit method rather than the BLS. "*A bank deposit is prima facia evidence of income and respondent need not prove a likely source of that income.* Estate of Mason v. Commissioner, 64 T.C. 651, 656-657 (1975), affd, 566 F.2d 2 (6th Cir. 1977), and Tokarski v. Commissioner, 87 T.C. 74 (1986). "*This method of determining a taxpayer's income assumes that all the money deposited into a taxpayer's bank account during a specific period constitutes taxable income.*" Price v. United States, 335 F.2d 671, 677 (5th Cir. 1964).

Under the bank deposit method, "*all deposits to the taxpayer's bank and similar accounts in a single year are added together to determine the gross deposits. An effort is made to identify*

amounts deposited that are non-taxable, such as gifts, transfers of money between accounts, repayment of loans and cash that taxpayer had in his possession prior to that year that was deposited in a bank during that year. This process is called 'purification.' It results in a figure called net taxable bank deposits." United States v. Boulet, 577 F.2d 1165, 1167 (5th Cir. 1978).

RESPONDENT uses this assumption regarding bank deposits against taxpayers on a regular basis and it is a time tested method. If the taxpayer has to prove to the court why RESPONDENT should have to use a different method than the bank deposit method, the RESPONDENT must in this case be required to demonstrate why the bank deposit method should be ignored and the alleged BLS numbers should be used instead.

The fact that the AUDITOR grossly erred in adding up the total bank deposits of PETITIONERS is proof that the AUDITOR erroneously made the decision to not use the bank account records and chose instead to use alleged BLS numbers. Her erroneous and lower additions regarding the bank records caused her to use the higher BLS numbers.

PETITIONERS should not be penalized for the incompetence of the AUDITOR who cannot perform basic math computations. By doing such properly, she would have learned that the bank deposits for years 2002 through 2006 ranged from **$27,775.21 to $74,564.57, which is almost triple that of what she claimed were the actual yearly bank deposits of $10,000 to $25,000**. RESPONDENT should have utilized the bank deposit method and provided PETITIONERS the opportunity to do a "purification" of the bank deposits. The court's finding to the contrary is erroneous and should be reversed.

III. The record shows that PETITIONERS repeatedly called and wrote the AUDITOR and her manager to discuss the tax proposals of the AUDITOR, but the AUDITOR refused to meet with the PETITIONERS. Therefore, the court erroneously held that the use of alleged BLS numbers was the last resort of the AUDITOR.

The MEMO on P. 8 correctly states: "On March 28, 2008, the revenue agent served each of the Mottahedehs with a summons…[On] Saturday, April 26, 2008 he [PEYMON] mailed a letter about the summonses … to the revenue agent." **Exs. 22, 23**. Howver, the court erroneously states: "*In the Letter the Mottahedehs stated that they would comply with the summons only if the revenue agent answered 36 questions set forth in the letter.*"

Petitioners did NOT state that they would comply with the summons only if the revenue agent answered 36 questions as set fort in that letter. PETITIONERS made 36 requests and observations, numbered 1 through 36 . **Ex. 24**. Howver, nowhere did the PETITIONERS in their letter imply, suggest or state that PETITIONERS "*would comply with the summons only if the revenue agent answered 36 questions set forth in the letter.*"

PETITIONERS stated the opposite in Point number 36 (**Ex. 24, P. 5-6**):

"After carefully reading and considering the above words, if you still refuse to withdraw these summonses, then **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 what part of it may be allowed by law and what part may not be allowed by law **so that we may bring the documents which would be responsive to your specific requests**.

We hope my suspicions of the IRS and government corruption and harassment of Peymon turn out to be wrong. Too often government officials try to hide the uncomfortable truth by simply ignoring people's legitimate concerns and questions. I hope that will not be the case here with you. **Your open honest and complete responses to my questions and concerns may** alleviate some of the suspicions and concerns that we have expressed in this letter and **assist us both to better resolve the issues at hand**.

Until we meet (if you do not cancel these Summonses), we prefer to keep our communications in the written form, so that miscommunications can be minimized. **When we meet** we will bring with us a court reporter and an audio recording device and up to 3 witnesses."

PETITIONERS did NOT state that they would not comply with the summons. PETITIONERS rightfully wanted clarification on many issues so that when they met with the AUDITOR, they could "*bring the documents which would be responsive to [AUDITOR'S] specific requests".*

It was the auditor herself that cancelled the summons, without even having the courtesy of informing PETITIONERS that she had done so. The entire record shows that there was no follow up on this summons by the AUDITOR.

In fact in an email on April 28, 2008, the AUDITOR had told her associates that "***Peymon has called*** *last Friday* ***on 4/25/08*** *at 2:63 and later* ***(4 times)****. He* ***left me a voice mail*** *to request my fax number. He said it is faster and easier to fax to me the summons due on 4/28…* ***I don't want to call him****."* **Ex. 46-P, P. 31.**"

Page 9 of the MEMO recounts that the AUDITOR "*did not want to call Peymon Mottahedeh because he might be playing 'another game'".* Her "feelings" in this respect does not constitute a basis for her decision to use BLS numbers. Other than the summons, the

PETITIONERS' letter noted above (**Exs. 22, 23, 24**), and PEYMON's 4 calls and voice mail for the AUDITOR, the PETITIONERS and the AUDITOR had no other communications. There was no factual basis for the AUDITOR to conclude that PEYMON was going to "*play another game*" with her, because PEYMON had never "*played a game*" with the AUDITOR. The court's conclusion about the PETITIONERS "playing a game" should be deleted from the MEMO.

The AUDITOR compiled a tax audit proposal ("AUDIT LETTER") that she mailed to PETITIONERS on April 25, 2011, which gave PETITIONERS until May 9, 2011 to respond to her proposal. **Ex. 27-J, pp. 20-38, 40-57**. The AUDIT LETTER stated in part: "*If you do not accept our findings, you may request a review of the proposed adjustments with the group manager. You may also appeal the proposed changes. These options are explained in the enclosed Publication 3498.*"

The enclosed Publication 3498 stated on the first page: "***The IRS Mission provide [sic] America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.***" Font size and bolding is in the original. **Ex. 27-J pp. 34, 53**. On the same pages, it also stated: "***As a taxpayer, you have the right to fair, professional, prompt, and courteous service from IRS employees, as outlined in the Declaration of Taxpayer Rights found on page 3… You must request reconsideration in writing and submit it to your local IRS office.***" Bolding in original. Underline added.

The same publication continued: "*If your examination is conducted in person, it can take place in your home, your place of business, an IRS office, or the office of your attorney, accountant…. If the time or place is not convenient for you, the examiner will try to work out something more suitable.*" **Ex. 27, pp. 35, 54**.

On the next page, Publication 3498 continues: "***If You Do Not Agree*** *with the proposed changes, the examiner will explain your appeal rights. If your examination takes place in an IRS office you may request an immediate meeting with the examiner's supervisor to explain your situation… If you cannot reach an agreement …, the examiner will prepare a report explaining your position and ours. The examiner will forward your case to the Area Office for processing. You will receive: A letter (known as a 30 day letter) notifying you of your rights to appeal the proposed changes; and … You generally have 30 days from the date of the 30 day letter to tell us whether you will accept the proposed changes or appeal them… Be sure to follow the instructions carefully.* ***Caution*** *If you do not respond to the 30-day letter, or if you respond but do not reach an agreement with an appeals officer, we will send you a 90 day letter, also known as a Notice of Deficiency."* Large font and bolding in original. Underlining added.

On May 9, 2011, PETITIONERS replied to the AUDIT LETTER by a letter which stated: "*We have reviewed the 2001 Tax Proposal Letter that you sent us, dated April 25, 2011. We have no idea where your numbers came from to make such assessments.* ***Please send us a copy of any and all paper work, notes, testimony, documents and anything else you relied on to make such calculations. This way we may be able to review those documents and set a time***

to meet with you to discuss your tax proposals. *You gave us only fifteen days from the date of your letter to respond. Please send your response on or before May 31st, 2011.* " **Ex. 27-J, P. 6**.

The AUDITOR's notes (hereafter "NOTES") in **Ex. 31-R, P. 6**, show that on May 10, 2011, the following entry is made: "*It appeared that t/p [PETITIONER PEYMON] called and left no message. T/p called [again and] requested work papers. I told him majority was from BLS.*"

The May 11, 2011 NOTES further state: "*Mailed 30 day package, 2 L950, 2 F870, standard paragraph to t/ph and t/pw. I received his letter 2 days after due date of RAR.*" On May 19 and 20, 2011, some unspecified "*Work papers*" were created by the AUDITOR. On June 3, 2011, the NOTES state: "*Per manager, t/ph called and left a message at 4:00 P.M....*" The June 7, 2011 NOTES state: "*T/ph sent a fax to request more work papers and label as 2nd protest letter. Manager sent the agent an email and advice from counsel while the agent is out to the field."*

In summary: Even though the IRS' Mission stated in bold big letters that PETITIONERS "*have the right to fair, professional, prompt, and courteous service from IRS employees*", and the AUDITOR is supposed to inform PETITIONERS' of their "*appeal rights*" and if PETITIONERS' *examination takes place in an IRS office,* PETITIONERS' "*may request an immediate meeting with the examiner's supervisor to explain*" PETITIONERS' "*situation*", there was no fair, professional, **prompt** and courteous service given. The AUDITOR ignored PETITIONERS' respectful oral and written request to review the factual basis of the AUDITOR'S audit calculations and to schedule a time to meet with PETITIONERS.

Rather than simply answering PETITIONERS call or letter, the AUDITOR ignored PETITIONERS phone call and letter and instead wasted 2 days of work on some unspecified, vague, other "*work papers*." The important question to ask is why the PETITIONERS' call and letter requesting the factual basis of the audit was ignored.

On June 7, 2011 **(Ex. 27-J, P. 7)**, PETITIONERS faxed and mailed a letter to THAI which stated:

> "*We are in receipt of two May 10, 2011 letters from the IRS which is signed by John A. Consoli and lists his name, address, phone numbers and address for where to mail our response to. I, Peymon, just spoke with* ***John A. Consoli*** *by telephone two days ago. Mr. Consoli* ***claimed that he is your supervisor and that we should contact you instead of him****. We are writing you as orally instructed by Mr. Consoli, and ccing Mr. Consoli as well to cover our bases.*
>
> *"In our May 9, 2011 letter which we sent in response to April 25, 2011 letters of Christine Thai to us, we asked for a copy of any and all paperwork ... that was used to make her tax calculations against us in the April 25, 2011 letter to us, so that we can review them and then meet with you to resolve this disputed matter. On May 12, 2011, you mailed us the tax calculations, but not the actual documents used to come up with your tax calculations. We are patiently waiting for receipt of the actual documents that the calculations are based on.*
>
> ***"Please consider this a repeat of our previous May 9, 2011 protest letter. We want to*** *have all the above-mentioned documents in our hands at least 30 days before we* ***schedule a meeting between us and both of you (Christine Thai and her supervisor/manager, John A. Consoli) to resolve this matter****."* Emphasis added.

It is obvious here that PETITIONERS were calling the AUDITOR, her manager, John Consoli ("MANAGER") and writing both the AUDITOR and the MANAGER to obtain the documents that showed the factual basis of the audit assessment numbers so that they could "*Schedule a meeting between*" the PETITIONERS and the AUDITOR and the MANAGER "*to resolve this [tax] matter.*"

The MANAGER evaded talking to PETITIONER, and failed to take responsibility that the AUDITOR was acting under the MANAGER'S direction and supervision, despite the fact that the 30 day letter had the MANAGER's name and signature on it as the issuer of that letter. See **Ex. 27-J, pp. 59-104,** for a copy of each PETITIONER'S 30 day letter, and **pages 59, 60, 83, 84** contain the MANAGER'S name, address and signature as the issuer of both 30 day letters.

Both 30 day letters were issued on May 10, 2011 and at the bottom of **pages 59 and 83 and top of 83 and 84** it is stated: "**What to Do if You Do Not Agree with the Proposed Changes.** *If after reviewing the proposed changes on the examination report you do not agree, you may request a meeting or telephone conference with the supervisor of the person identified in the heading of this letter. If you still do not agree after the meeting or telephone conference, you can request a conference with our Appeals Office… If you decide to request a conference with the examiner's supervisor, please make the request by the response indicated. Mail Responses To: Internal Revenue Service Attn: John Consoli 24000 Avila Road, MS 5114 Laguna Niguel CA 92677."* Bolding and font in original. Underlining added.

These 30 day letters were accompanied with IRS' Publication 1, which is headlined in big bold lettering, "**Your Rights as a Taxpayer**". Emphasis in Original. **Ex. 27-J, pp. 79, 104**. This publication states in relevant part: "*The first part of this publication explains **some of your most important rights as a taxpayer**. The second part **explains the examination,***

appeal… processes*… I. Protection of Your Rights. IRS employees will explain and protect your rights as a taxpayer throughout your contact with us*." Emphasis added.

The next enclosed publication entitled "**Your Appeal Rights and How to Prepare a Protest if You Don't Agree**" (bold and big font in original) began by stating: "*This Publication tells you how to appeal your tax case. If you don't agree with the Internal Revenue Service (IRS) findings,* ***you may request a meeting or a telephone conference with the supervisor of the person who issued the findings****. If you still don't agree,* ***you may appeal your case to the Appeals Office of IRS***." Ex. 27-J, p. 80.

The AUDITOR and her MANAGER ignored these important due process rights of PETITIONERS, and the reason for so ignoring are obvious: the AUDITOR sought to conceal her very faulty method of determining PETITIONERS' income. See **Ex. 31-R, P. 5, note dated November 17, 2010** which states: "***Meeting counsels, may*** *close income tax cases, using information with supporting documents then* ***use BLS*** *for cash payments and others*." Emphasis added.

The AUDITOR, as shown at **Tr. 555, line 22-23 through p. 556, line 17,** admitted that despite the fact that the IRS publications she had sent to PETITIONERS informed them that they have a right to meet with the AUDITOR and her manager to dispute the AUDITOR'S proposals, the AUDITOR "***was instructed to close the case***" **and that she was told this by her manager "*****indirectly***."

It is now proven that the MANAGER ordered the AUDITOR to arbitrarily ignore and violate all of the meeting, review and appeal due process rights of PETITIONERS. Clearly, Congress and the Commissioner intended by these IRS publications and the procedures they outline to provide some pre-Tax Court due process rights before a taxpayer was forced to litigate possibly resolvable disputes in Tax Court.

"'*[A] primary function of legal process is to minimize the risk of erroneous decisions'. Mackey v. Montrym, 443 U.S. 1, 13 (1979). Consequently, a foreseeable action that may cause deprivation of property must be 'preceded by notice*.' *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (emphasis added). As we made clear in Goldberg, 397 U.S., at 267, in statutory entitlement cases the* ***Due Process Clause normally requires 'timely and adequate notice detailing the reasons'*** *for proposed adverse administrative action. Such process is constitutionally required whenever the action may be 'challenged . . . as* ***resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.'*** *Id., at 268*." Atkins v. Parker, 472 U.S. 115, 148 (1985). Emphasis added.

The AUDITOR arbitrarily chose not to provide PETITIONERS with the documents supporting her audit of PETITIONERS and refused to meet with them. The MANAGER also failed to provide a managerial review to the PETITIONERS and refused to meet with the them and his refusal to meet with PETITIONERS denied them the ability to appeal the MANAGER'S findings to the IRS Appeals Office (since there was no manager meeting, or finding, to appeal to the IRS Appeals). RESPONDENT consequently failed to carry its burden of proof as to why RESPONDENT had to use the alleged BLS numbers against the PETITIONERS.

Therefore this court should reverse tis conclusion in its MEMO and hold that the AUDITOR and the MANAGER should have met with PETITIONERS before employing alleged BLS numbers against PETITIONERS.

IV. The Court erroneously held that Freedom Law School is a "Business" of PETITIONERS and therefore any income of the Freedom Rallies/Seminars was attributable to PETITIONERS. The undisputed record proves that in actuality Freedom Law School is not a business of either PETITIONER, but an auxiliary of Freedom Church, which is located at a different location than PETITIONER's address.

The court on **pages 5 and 24** of the MEMO concluded that "*Peymon Mottahedeh operated a business called 'Freedom Law School'*", and "*the record establishes that the couple's businesses were joint efforts.*" **The record in this case shows otherwise**.

Ex. 7, pages 1-8, reveals on the bottom right side that these pages were printed on April 11, 2002. **Ex. 7, p. 1,** stated in big bold print that "*Freedom Church is expanding*", and further stated that "*Some of you are not aware that Freedom Law School (F.L.S.), is one of the educational arms of the Freedom Church (F.C.).*" The same language is found at the top of **Ex. 7, p. 2**.

At the end of the "*Application for Freedom Church membership/contribution*" which is found at **Ex. 7, pp. 3-4** there appears the following: *"© www.freedomchurch.org 1999 all rights reserved.*" **Ex. 7, p. 5**, shows Freedom Church's address as "*13211 Myford Rd. #332 Tustin, CA 92782*".

The record shows that during the years at issue in this case, 2001 through 2006, PETITIONERS resided at "*9582 Buttemere Road, Phelan, CA 92371*". See **Ex. 7, pp. 17, 23, 28, 29, 101**. All of these pages are prints from the FC website related to the Freedom Rallies/Conferences and were printed by an employee of RESPONDENT in 2002, 2004 or 2009, the printing date appearing on the bottom right side of the page. However, these pages are clearly related to the 2001 through 2006 Freedom Rallies/Conferences.

Freedom Church has at the end of the URL for its website the designation ".org", an abbreviation of the term "organization" that is provided to non-profit organizations, charities or churches. The URL designation ".com", is the abbreviation of the term "commercial" for commercial or for profit entities. **Ex. 7, pp. 2-8**.

The URL for Freedom Law School's website also has an ".org". **Ex. 7, pp. 149, 154-156**. The record clearly shows that Freedom Law School is a part of Freedom Church and both entities are not for profit entities, operating from different locations. Therefore the proceeds of any sale of books, tapes, CDs or DVDs, conferences or other products or services that Freedom Law School sold, as noted on **pages 5 and 6** of the MEMO, belonged to Freedom Law School and Freedom Church, not the PETITIONERS.

The AUDITOR could have contacted Freedom Church to obtain more information about Freedom Law School or its President, PEYMON, but failed to do so. The AUDITOR'S failure to contact Freedom Church is not the first, nor the last, time that the AUDITOR refused to work this case and instead took short cuts, which led the AUDITOR to her false conclusions and erroneous actions.

Based on the record as cited above, none of the receipts of Freedom Law School could be imputed as a business income of PETITIONERS. The court's holding to the contrary was error and should be vacated.

V. The Court erroneously ruled that PETITIONERS had "businesses", and that half of the income of these "businesses" were attributed to PETITIONER APRIL. These conclusions of the court are not supported by anything in the record.

On **page 24**, the MEMO states: "*And the record establishes that the couple's businesses were joint efforts of both spouses.*" The court on **page 13** of the MEMO states: "*evidence links Peymon Mottahedeh to the income producing activities of (1) the Freedom Law School, and (2) practice before the California Franchise Tax Board.*" It appears that the two businesses that the court is referring to are "*Freedom Law School*" and "*practice before the Franchise Tax Board*."

However, the MEMO shows a contradiction on **page 13**: "*the record demonstrates that his practice before the California Franchise Tax Board was linked to the Freedom Law School.*"

This contradiction of the MEMO within itself is a basis for reversal of the conclusion that PETITIONERS had income from "*businesses*.", meaning another "business" beside just Freedom Law School.

The only allegation of RESPONDENT and the AUDITOR throughout this case that PETITIONERS had a business is the allegation that Freedom Law School is a business of PETITIONERS. This allegation is shown as erroneous in section IV hereof.

The MEMO's "*practice before the California Franchise Tax Board*" conclusion relies first on the testimony of a WITNESS who was asked at **Tr. 76**: "*Do you know who Christiane Thai [AUDITOR] is?*", to which he responded at **Tr. 77** "*No, I do not.*" At **Tr. 78**, this witness was asked: "*Do you know an IRS employee named John Consoli [MANAGER]*?", to which he answered: "*Never heard of him.*" Lastly, when asked "*Did any IRS employee contact you about information to provide to them about Freedom Law School over five months ago?*", this witness replied "*No*" again.

Therefore the testimony of this WITNESS was not a part of the AUDITOR'S or MANAGER'S investigation and fact gathering that led to the AUDITOR'S claim in the Notice of Deficiency that PEYMON has income from representing people before the California Franchise Tax Board (hereafter, "FTB".)

In this case, because of the minimal evidentiary foundation requirement for unreported income cases as explained in Weimerskirch v. Commissioner, 596 F.2d 358 (9th Cir. 1979) and Section 7491(b), there must be an examination of what evidence the AUDITOR in this case had

before her and was considering when she compiled the Notice of Deficiency regarding the PETITIONERS.

The above noted WITNESS' testimony proved that neither the AUDITOR **nor** any employee of RESPONDENT had ever contacted him to obtain his testimony upon which to base the conclusions of the NODS. For this reason, the testimony of this WITNESS should not be considered in determining whether the RESPONDENT has established the minimal evidentiary foundation that the Weimerskirch doctrine, *supra,* and Section 7491(b) require.

Without this WITNESS' testimony (and a one page document that will be addressed *supra*), there is absolutely nothing in the record, except the AUDITOR'S own conclusory hearsay and baseless statements shown in the AUDITOR's notes, for the conclusion that PEYMON representated parties before the FTB during the years 2001 through 2006. Therefore this court should reverse the MEMO's conclusion that PEYMON practiced before the FTB for the years 2001 through 2006.

In addition, this WITNESS provided no receipts or other documents in support of his naked assertions that he paid $22,000 to PEYMON between 2003 and 2009. It is unreasonable to believe that the WITNESS would give $22,000 in cash to PETITIONER over the course of 7 years and not get any receipts for his cash payments, since without any receipts, the witness would have had no recourse to PETITIONER for non-performance by PETITIONER.

"*Under all the circumstances, we are not required to accept the self-serving testimony of petitioner or that of his mother as gospel.*" Tokarski v. Commisssioner, 87 T.C. 74 (1986),

"*Petitioner… relies on his own testimony and uncorroborated testimony. We are not required to accept such testimony and will not do so here.*" Hall v. Commissioner, T.C. Memo. 2014-16.

Moreover, the WITNESS did not even show how much in each year he allegedly paid to PEYMON from 2003 through 2009. Dividing the alleged $22,000 by these 7 years is just over $3,000 per year.

Furthermore, years 2007, 2008, and 2009 are 3 years indicated by this WITNESS' testimony that this $22,000 was allegedly paid to PEYMON, which are subsequent to 2001-2006. Lastly, but not least, there was no testimony by the WITNESS that in the years 2001 and 2002 he paid anything to PEYMON.

Not only can there can be no inference that PEYMON represented anyone before the FTB for years 2001 and 2002, but even for the other years, at best, being paid on average $3,000 per year is lower than 5% of the taxable business income that the AUDITOR attributed to PETITIONERS for years 2003–2006, which are $69,653, $66,924, $56,850 and $83,629. And the conclusion on **page 14** of the MEMO that "*April Mottahedeh*" participated in PEYMON'S "*practice before the California Franchise Tax Board*" is utterly without any support in the record.

At best the funds that this WITNESS claimed to have paid to PEYMON is very minor, less than 5% of the business income numbers that the AUDITOR attributed to PEYMON. The WITNESS' lack of receipt or other document to support his claim of having paid any of the$22,000 is incredible and not believable.

RESPONDENT never established how much of the alleged $22,000 was paid during the years 2003 through 2006 and how much was paid in the years 2007 through 2009, which are not the subject of this case. In addition, there is no evidence in support of the claim that PEYMON practiced before the FTB in 2001 or 2002. Last, but not least, there is simply **NO** evidence that APRIL ever represented or assisted anyone before the FTB, and the MEMO'S conclusion on **page 24** in this respect is erroneous.

The MEMO on **page 14** erroneously states in reference to "*Mottahedeh's involvement in practice before the California Franchise Tax Board,"* that *"the record contain copies of official announcements of the hearings involving the board in which he was listed as the representative of several taxpayers"*.

The MEMO's conclusion of "*practice before the California Franchise Tax Board*" relies on **Ex. 19**, which is a 9 page California Board of Equalization NOTICE AND AGENDA of September 12, 2006, which included 82 different matters to be heard, considered or decided. PEYMON'S name appears as a representative for 8 individuals for this **one day only**. First of all, this document on its face has nothing to do with years 2001 through 2005. Therefore there is no documentary support for court's conclusion that PEYMON practices before the FTB for years 2001 through 2005.

PEYMON's represention of a few people on **one day** does not mean that he represented them for more than the one day to which **Ex. 19** relates. Just like Tax Court records and other public agency and court records, the records of the California Board of Equalization filings are public and obtainable by anyone including the AUDITOR, who failed to obtain any records that

may have shown a long term, continuous representation of people by PEYMON, assuming they existed, which apparently they do not.

Ex. 19 contains the name of Magness, the WITNESS who testified about paying PEYMON for FTB assistance. As noted above, the WITNESS testified that he **did not have** any contact with the AUDITOR or the MANAGER and did not know who they were. The WITNESS further testified that in the last 5 months prior to this trial he had not heard from any employee of RESPONDENT (**Tr. 79**).

This testimony proves that the WITNESS and **Ex. 19** were discovered some time shortly before trial by RESPONDENT. This contact occurred within the last 5 months before trial, long after the issuance of the NODS in this case. The AUDITOR never spoke to WITNESS and **Ex. 19** was not part of the documentation used to calculate the NODS.

The AUDITOR plainly had no evidence related to WITNESS's contact with PEYMON prior to issuance of the NODS; but if she had properly investigated this case and found such evidence, this situation could have been addressed if only she had accorded the PETITIONERS with the opportunity to discuss this issue and explain the relevant facts.

Therefore the MEMO's conclusion that PETITIONERS had business income from Freedom Law School or practice before the FTB was error and should be vacated. In addition, the erroneous conclusion of the MEMO that APRIL was a partial recipient of Freedom Law School income or FTB practice should be vacated.

VI. The court made many erroneous findings of fact to reach its conclusion that APRIL had half ownership of Freedom Law School and that PETITIONERS owned property; findings that should be vacated.

The MEMO erroneously states on **page 13:** "*Documentary evidence also establishes that April Mottahedeh helped operate Freedom Law School by arranging conferences and handling its finances. Her name appears in several checks and money orders received from customers of Freedom Law School. Checks and money orders from the customers were deposited into her account at Arrowhead Credit Union. There are several hundred pages of these documents. April Mottahedeh's name appears on various legal documents that the Mottahedehs used to conceal their ownership of two properties. To better conceal their ownership, she also apparently wrote letters to lenders under a fake letterhead falsely claiming that she managed property as trustee.*"

These conclusions are in error.

In Interstate Commerce Commission v. Louisville & N. R. Co., 227 U.S. 88 (1913), the U.S. Supreme Court reiterated the importance of courts and administrative agencies to base their conclusions on the relevant facts:

> "*[T]he statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved.* ***A finding without evidence is arbitrary and baseless****. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all*

rules of evidence, and capriciously make findings by administrative fiat. ***Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power****.*

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi judicial in character, ***are void*** *if a hearing was denied; if that granted was inadequate or manifestly unfair;* ***if the finding was contrary to the 'indisputable character of the evidence.'****"* Id., at 91.

*"****A finding without evidence is beyond the power of the Commission****. An order based thereon is contrary to law, and must, in the language of the statute, be 'set aside by a court of competent jurisdiction."* Id., at 92.

"But the more liberal the practice in admitting testimony, ***the more imperative the obligation to preserve the essential rules of evidence*** *by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information…*" Id., at 93. Emphasis added.

The MEMO erroneously concluded that the PETITIONERS "*arrang[ed] [Freedom law School] conferences*". The MEMO is correct in footnote 19, where it states that APRIL'S divorce from "*her previous husband was not filed until June 13, 2001.*" The divorce occurred in Florida. **Ex. 42**. Footnote 19 correctly notes that PETITIONERS married 11 days later on June 24, 2001 and executed a community property agreement in October, 2001 [in California.]

The PETITIONERS stipulated that they were married "*during the years at issue*", but such a stipulation does not preclude proof of the exact date that they were married. As undisputed **Ex.42-P** shows, PETITIONERS were married on June 24, 2001.

The only documents in the record about the 2001 Freedom Rally is found in **Ex. 7, pages 58-61. Ex. 7, p. 58** shows that the 2001 Freedom Rally was held on April 7-8, 2001, more than 2 months before PETITIONERS were married on June 24, 2001, and while APRIL was still

married to her ex-husband in Florida. Therefore, APRIL could not have been a part of the 2001 Freedom Rally and the MEMO should be modified to reflect this fact. There is absolutely no proof that APRIL participated in that Rally in any way.

There are no hotel records for the 2003 Freedom Rally and the 2006 Freedom Conference. **Ex. 7, pages 14-17 and 96-101** are the only documents in the record about the 2003 Freedom Rally and the 2006 Freedom Conference and neither one of these documents have APRIL's picture, name or signature anywhere on them. There is simply no factual basis for the finding in the MEMO that APRIL was involved in the 2003 Freedom Rally and the 2006 Freedom Conference and the MEMO should be amended to reflect the foregoing.

As for the 2002, 2004 and 2005 Rallies/Conferences, just because APRIL was the **contact person** for these events with the Hotel, does not make APRIL the "co-owner" of these events. America has tens of thousands, if not hundreds of thousands of churches, like Freedom Church, who have a school as one of their auxiliaries, as Freedom Law School is an auxiliary of Freedom Church.

It is not uncommon for pastors, presidents, chancellors or principals of these schools to help organize events for the schools that last one, two or 3 days, once or twice a year as Freedom Law School Rallies and Conferences have been. Just because the wife of a pastor, president or principal assists or helps organize one aspect of the events, such as the arrangements for the meeting place and dinner at the hotel, does not elevate her status to that of "co-owner" of the school as erroneously assumed and concluded in the MEMO.

Therefore the MEMO should be revised to read that APRIL was not a co-owner of Freedom Law School Rallies/Conferences.

The Memo erroneously states: "*Her name appears in several checks and money orders received from customers of Freedom Law School.*

The records of Arrowhead Credit Union that are in the record are over 3 inches thick and and constitute 650 pages to be exact. **Ex. 12**. However, **none** of the checks or money orders are from a "*customer of Freedom Law School*" with "*Her [APRIL] name*" on them as the MEMO erroneously states. Even the AUDITOR in her testimony did not make such a claim unsupported by facts. There is simply no check of a Freedom Law School student (or "*customer*" according to the MEMO) payable to APRIL. Therefore the above findings of fact should be removed from the MEMO.

The MEMO states: "*Checks and money orders from the customers were deposited into her account at Arrowhead Credit Union. There are several hundred pages of these documents.*" Notwithstanding the term "customer", which is very conlsusionary, given that Freedom Law School and its parent organization Freedom Church are non-profit organizations as shown above, the point of the court that checks and money orders wre deposited in APRIL'S Arrowhead Credit Union Account (hereafter, "APRIL'S ACCOUNT") will be addressed below.

First: There is no check in the record for years 2001 and 2002 that were deposited into APPRIL's ACCOUNT. The MEMO should be accordingly corrected.

Second, There were not "several hundred pages of these documents [check/money orders]" as the MEMO incorrectly states. PETITIONERS have vigorously examined the 650 pages of APRIL'S ACCOUNT (**Ex. 12**), to determine and identify any and all checks/money orders that in their memo line indicated that they were for an event of Freedom Law School or for Freedom Law School Freedom Rallies or Conferences, or were payable to Freedom Law School or PEYMON. Below are the pages in the **Ex. 12** where these checks are located, separated by the tax year to which they belong, and the totals of all of these checks by tax year.

Year 2003 has 4 checks totalling $1,110. **Ex. 12, pp. 26-29**. Year 2004 has 33 checks totalling $5,051. **Ex. 12, pp. 32-33, 35-39, 41, 44-46, 48, 51, 54, 56-65, 79, 82, 103, 109**. Year 2005 has 28 checks totalling $5,095. **Ex. 12, pp. 115-119, 129, 135, 143, 146, 154, 166, 168, 170, 172, 180, 186, 191, 197, 205, 229, 239, 281, 299, 301, 321, 331, 349, 359**. Year 2006 has 21 checks totalling $5,290. **Ex. 12, pp. 395, 401, 405, 411, 417, 421, 427, 431, 435, 453, 459, 530, 547, 549, 557, 589, 614, 617, 621, 631.** Therefore, during 2003 to 2006, there are only 86 checks, and not "hundreds of checks" as the MEMO erroneously states.

A comparison of these checks to the bank deposits for APRIL'S ACCOUNT (**Exs.44-P, 45-P, p.107)** shows the following:

Year 2003: total bank deposits for APRIL'S ACCOUNT is $41,986.59, of which $1,110 are the checks identified above, which is less than **3%** of the total deposits. Year 2004: total bank deposits for APRIL'S ACCOUNT is $27,775.21, of which $5,051 are the checks identified above, which is just over **18%** of the total deposits. Year 2005: total bank deposits for APRIL'S ACCOUNT is $37,823.41, of which $5,095 are the checks identified above, which is over **13%**

of the total deposits. Year 2006: total bank deposits for APRIL'S ACCOUNT is $44,973.71 of which $5.290 are the checks identified above, which is just under **12%** of the APRIL'S ACCOUNT total deposits. Altogether, the percentage of the identified checks compared to APRIL'S ACCOUNT total deposits is **less than 12%**, which is an insiginificant amount of the total deposits and only for years 2003 through 2006.

PEYMON's total bank deposits for years 2003 and 2004 are $13,549 and $6,738. If these amounts are added to APRIL'S ACCOUNT totals, the percentage of the above identified checks to the combined deposits of APRIL'S ACCOUNT and PEYMON'S ACCOUNT would be even lower. Nonetheless, the totals of these checks are substantially less than the income amounts used in the NODS.

The MEMO errs when it claims that "[t]here are several hundreds of these documents [checks/money orders]" and placed too much emphasis on this small percentage of the total of APRIL'S ACCOUNT deposits. But ignoring this flaw, it must be remembered these checks deposited into APRIL'S ACCOUNT were the basis for the conclusion that APRIL was an owner of the business in question. With this proof of income for that business, the question must be asked why these business receipts were not used to determine the income this "business" generated, instead of the BLS numbers.

The AUDITOR could have contacted Freedom Church, the parent organization of Freedom Law School, to compare its records to that which the AUDITOR had. There is no indication in the record that the AUDITOR ever did the type of check identification and calculation of totals as that shown here. The failure of the AUDITOR to perform a proper audit

and mske correct calculations does not justify her rush to use allegedly BLS to calculate the income of PETITIONERS for the years 2001 through 2006.

Page 17 of the MEMO states: "*The Mottahedehs tried to avoid banks and records. Much of their income was therefore hidden from the IRS – and from the Court*." First, this statement contradicts the Court's previous statement that "*Checks and money orders from the customers were deposited into her account at the Arrrowhead Crediut Union*." If PETITIONERS tried to avoid banks, what is the consequence of having the actual bank records? Furthermore, the fact that PETITIONERS in years 2001 through 2006 had up to $74,564 per year (**Exs. 8, 12 and 44-P, 45-P, p. 107**), shows that PETITIONERS did not try "*to avoid banks and records*" and much of PETITIONER'S income was NOT hidden "*from the IRS – and from the Court*" as erroneously concluded.

The fact that the AUDITOR continually refused to meet with PETITIONERS as described above is the reason why any financial aspect of PETITIONER'S life was hidden from the IRS. In addition the Court's erroneous granting RESPONDENT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE AND TESTIMONY (hereafter, "MOTION IN LIMINE") which prohibited PEYMON from "*testif[ing], introduce[ing] documents, or examine[ing] witnesses as to ... their [PETITIONERS] bank accounts, books and records*" added to this problem.

Therefore the part of the MEMO which states "*The Mottahedehs tried to avoid banks and records. Much of their income was therefore hidden from the IRS – and from the Court*" should be removed from the MEMO.

Another factual conclusion noted on page 13 of MEMO stated: "*April Mottahedeh's name appears on various legal documents that the Mottahedehs used to conceal their ownership of two properties. To better conceal their ownership, she also apparently wrote letters to lenders under a fake letterhead falsely claiming that she managed property as trustee.*"

APRIL'S name certainly does appear as trustee for two properties, however, there is no evidence that PETITIONERS owned either one. **Exs. 9, 10, 11**. The free online Black's Law Dictionary at http://thelawdictionary.org/trust/ defines a trust as "*An equitable or beneficial right or title to land or other property, **held for the beneficiary by another person**, in whom resides the legal title or ownership, recognized and enforced by courts of chancery. See Goodwin v. McMinn, 193 Pa. 046, 44 Atl. 1094, 74 Am. St. Rep. 703; Beers v. Lyon, 21 Conn. 613; Seymour v. Freer, 8 Wall. 202, 19 L. Ed. 300.*" Black's Law Dictionary at http://thelawdictionary.org/trustee/ defines a trustee as "*The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it **for the benefit or to the use of another**.*" At http://thelawdictionary.org/beneficiary/ Black's Law Dictionary defines beneficiary as "*One for whose benefit a trust is created*." Emphasis added.

APRIL, as trustee of these properties, held title for the benefit of the beneficiaries who are the true owners of these trusts. Many of the records in **Exs. 9 and 10** are public records or records that title insurance companies obtained from public records. Neither PETITIONER has been shown to be the beneficiary of either trust.

PEYMON, consistent with the testimony of Kathryn Hathaway (**Tr. 103, 108-113**) and supported with documents (**Ex. 10**), voluntarily testified that the approximately $800 per month court ordered child support that APRIL was receiving from her ex-husband was used to purchase the Hathaway Trust Property for the benefit of her children, and she provisionally made her sister the beneficiary (**Tr. 858-861**).

The MEMO without the existence of ANY contradictory testimony (except the factually unsupported conclusion of the AUDITOR) or documents, erroneously concludes that PETITIONERS owned the Hathaway Trust and further erroneously concluded that PETITIONERS were "*hiding*" such ownership.

"*Generally, a taxpayer's unimpeached, competent, and relevant testimony 'may not be arbitrarily discredited and disregarded' by the court. Loesch & Green Const. Co. v. Commissioner, 211 F.2d 210, 212 (6th Cir. 1954).*" Conti v. Commissioner, 39 F.3d 658, 664 (6th Cir. 1994). "*We may not arbitrarily disregard testimony that is competent, relevant, and uncontradicted."* Ebert v. Commissioner, T.C. Memo 2015-5.

Therefore the court should delete the part of the MEMO that claims PETITIONERS owned the Hathaway Trust and were concealing such ownership.

Regarding the Scribner Land Trust, there is simply nothing in the record to show anything improper with that Trust or that it is in anyway owned by the PETITIONERS. With no testimony or document in any way proving that the Scribner Land Trust was owned by the PETITIONERS, the finding of the MEMO that PETITIONERS owned the Scribner Land Trust

and hid it must also be removed. Even the AUDITOR admitted that "***I am assuming*** *that they [PETITIONERS] own the property [Scribner Land Trust]… I could not find anything to prove it.*" **Tr. 166.** Emphasis added.

Therefore the MEMO's erroneous conlusion that PETITIONERS owned the two properties and concealed their ownership thereof must be deleted from the MEMO.

The MEMO's conclusion about APRIL using a "*fake letterhead falsely claiming that she managed property as trustee*" should also be removed from the MEMO, since there is nothing in the record to prove that the "*letterhead*" or the "*trusteeship*" of APRIL was fictitious. Therefore this statement of the MEMO should also be deleted from the MEMO.

VII. The MEMO's conclusion regarding PETITIONERS' income, derived from alleged BLS, is erroneous and contradicted by actual BLS website numbers.

The MEMO correctly states on pages 18-19 that RESPONDENT may use the BLS when "the taxpayer fails to cooperate with the IRS." It has been shown that PETITIONERS attempted to "cooperate with the IRS" by sending letters and making calls to the AUDITOR and her MANAGER. However, it was the AUDITOR who failed to call or write back to PETITIONERS and it was the MANAGER who arbitrarily told the AUDITOR to not meet with PETITIONERS to resolve this tax case. See **Issue III** above. Therefore the use of BLS by the AUDITOR was error.

The MEMO also correctly states that "regional living-expense from Bureau of Labor statistics" may be used by RESPONDENT. The AUDITOR used "West" regional BLS numbers which does not provide any differentiations betwen rural and urban areas. **Tr. 296-305**.

However, AUDITOR's testimony is contradicted by BLS' tables which show that BLS publishes "Outside urban area" statistics, along with "Urban consumer units" numbers. Moreover, the "Urban consumer units" numbers are further divided into six different categories of sizes for urban areas, from Urban areas having "less than 100,000" in population all the way up to populations of "5,000,000 and more". Therefore the AUDITOR did not use the rural numbers, which would have been the proper BLS numbers to use for PETITIONERS who lived in Phelan, California, a rural area. Compare **Ex. 5, pages 5, 7 and 27-J, pages 106-148 with Ex. 43-P, pages 3–6, 9–12 and 14–17**.

The MEMO on **pages 19-20** asserts that the reason the alleged BLS numbers used by the AUDITOR vary 37% from year 2001 to 2002 is due to the fact that the AUDITOR estimated PETITIONER'S "*actual spending on the basis of the information she had collected*."

However, the MEMO failed to explain the other proof that shows other years wildly varied, too: 2002 to 2003 has a 13.9% increase; 2003 to 2004 shows a decrease of 3.9%; 2004 to 2005 shows a 15% decrease, and the 2005 to 2006 variance is an incredible 47% increase. **Ex. 5, pages 5, 7, Ex. 6, pages 5, 7 and Ex. 43-P, pages 20-21**.

Moreover, the BLS only publishes dual year "*Average annual expenditures and characteristics, Consumer Expenditure Surveys*". **Ex. 43-P, pages 3-6, 43-P, pages 9-12, 14-17**.

Even with the adjustments of the other information that the AUDITOR collected, the numbers used AUDITOR are simply inexplicable.

The MEMO erroneously concluded "*The revenue agent credibly testified that the Bureau of Labor Statistics was the source of the average-spending statistics that she relied on. Notations in her paperwork corroborate her testimony.*" This conclusion is contradicted by the facts.

Further lack of credibility of the AUDITOR is proven by her erroneous mathematical calculations. This AUDITOR is the same AUDITOR who added the bank deposits of PETITIONERS and claimed that they ranged from $10,000 to $25,000, an assertion contradicted by BLACK. BLACK correctly added the bank deposits and correctly concluded that they ranged from **$27,775.21 to $74,564.57, amounts which are <u>almost triple</u> the unsubstantiated conclusion of AUDITOR**. See **Issue I.** above. It must be noted that the PETITIONERS' requests to confer with her were ignored. See **Issue II** above.

The AUDITOR provided no documents of any kind to support her claim that she used BLS numbers, which incidentally are contradicted by the actual BLS numbers from BLS' own website. As the court in *Tokarski, supra* stated, it "*is not required to accept self-serving testimony… as gospel.*"

The AUDITOR admitted that she did NOT peruse the BLS website as directed by the IRM and as her legal counsel admonished her to do. **Tr. 436 – 439, 289 – 292, 788, 863 – 877, Ex. 20, Ex. 31-R, p. 5, and <u>November 17, 2010</u> notes of the AUDITOR:** *"meeting with*

counsels, may close income tax cases, using information with supporting documents then use BLS for cash payments and others." See IRM. Section 4.10.4.6.1.3.

Given the AUDITOR'S rejection of the IRM's instructions (used to guide RESPONDENTS employees about how to perform their jobs correctly) as well as her legal counsel, this Court should not give any credibility to the unsupported and contradicted claims of the AUDITOR that she used computer software on an IRS computer that contained BLS data.

It is proven that the numbers that the AUDITOR used to attribute expenses/income to PETITIONERS were not BLS numbers. Therefore the NODS are erroneous and the Court should so state in its revised MEMO.

VIII. The Court erroneously did not allow PEYMON to introduce evidence in this case about Freedom Rallies/Conferences to show that these events were not money making events and had not provided any personal gain to PETITIONERS.

RESPONDENT knew that PEYMON had been under criminal and other high scrutiny investigations since at least 1992, as it was RESPONDENT who was conducting these investigations. **Ex. 25-J** shows on its first page that, in response to PEYMON'S Freedom of Information Act requests for IRS documents concerning him for years 1992 through 2008, the IRS possessed over 8,000 pages of responsive documents, but was refusing to provide more than 6,000 of them to PEYMON. The main reason that IRS refused to produce these 6,000+ pages

was based on FOIA exemption (b)(7)(A), which exempts "*disclosure of records or information compiled for law enforcement purposes.*" **Ex. 25-J, pp. 1-2**.

The Court recognized that PETITIONER did have a legitimate fear of potential prosecution by answering RESPONDENT'S question about the books and records of Freedom Law School. However, RESPONDENT did NOT ask about the books and records of PEYMON or that of the Freedom Rallies/Conferences, or pose questions to AUDITOR about **Exs. 7, 14-16**. Tr. 133-147.

As a result, the court erroneously did not allow PEYMON to introduce records about the Freedom Rallies/Conferences, which deprived PEYMON of the opportunity to refute or impeach these records or learn more about how these documents were obtained, possibly illegally, which could make those documents inadmissible.

Further, the court held that RESPONDENT does not have the burden of proof in this BLS case as Section 7491(b) dictates, but it instead accorded to RESPONDENT the preponderance of evidence burden. The preponderance of evidence burden of proof requires the weighing of evidence, both favorable and unfavorable, regarding a disputed fact issue. But here, PETITIONERS were denied the opportunity to refute the evidence presented by RESPONDENT.

Here in this case, the AUDITOR and her MANAGER refused to meet with PETITIONERS or provide any documents regarding the calculations of PETITIONERS' income during the audit process. See Issue II above. Then at trial, RESPONDENT insisted on putting

PEYMON on the stand, knowing full well that because RESPONDENT had PETITIONER under criminal and other investigations for many years, that PEYMON would be forced to assert his 5th Amendment rights in response to many questions of RESPONDENT. Based on PEYMON'S assertions of his rights against self-incrimination, RESPONDENT successfully persuaded the Court to erroneously prevent PEYMON from providing any documents concerning the Freedom Rallies/Conferences, or to question the AUDITOR about **Exs. 7, 14-16**. The court erred by adopting the preponderance of evidence burden of proof, and then denying to PEYMON the opportunity to contradict the proof presented by RESPONDENT.

IX. Other Errors.

The MEMO states on p. 5: "*Freedom Law School conferences attended by hundreds of people… charged fees to attendees, sold books, tapes, CDs, and DVDs. It also sold package of services, including the 'Simple Freedom Package'… 'Royal Freedom Package'…, offered multilevel marketing arrangements including: 'Freedom Fighter in training'; 'Freedom Promoter'… promoted various techniques for evading the payment of income taxes…Mottahedehs collected the fees paid by the Freedom Law School's customers*."

There is no evidence that FLS sold any "*Simple Freedom Package*" or "*Royal Freedom Package*" at anytime between 2001 through 2006. Apparently the MEMO is basing the above statements on **Ex. 7, pp. 151-153**, which were printed on Friday, April 2, 2004 at 01:13 PM.

There is no evidence in the record that PETITIONERS "*promoted various techniques for evading the payment of income taxes.*"

These pages only reflect what was on the FLS website literally at that time. To impute more than that would have **no limits**. See Pizzarello v. United States, 408 F.2d 579, 583-84 (2d Cir. 1969); and Llorente v. Commissioner, 649 F.2d 152, 156 (2d Cir. 1981). The problem in this case is that there are lots of claims regarding the income of the PETITIONERS for the years at issue that have little to no connections to "ligaments of fact". See Weimerskirch v. Commissioner, 596 F.2d 358, 361 (9th Cir. 1979).

CONCLUSION

For the reasons noted above, the MEMO should be amended and revised accordingly.

Respectfully submitted on this the 21st day of July, 2015.

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