



UNITED STATES TAX COURT
WASHINGTON, DC 20217

James E. Van Pelt,)	
)	
Petitioner)	
)	
v.)	Docket No. 13494-20
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	
)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is
ORDERED that the Clerk of the Court shall transmit herewith to petitioner
and to respondent a copy of the pages of the transcript of the trial in the above case
before Judge Joseph W. Nega in Hartford, Connecticut, containing his oral
Findings of Fact and Opinion rendered on September 30, 2021, at the remote
hearing at which the case was heard. In accordance with the oral Findings of Fact
and Opinion, an appropriate decision will be entered.

(Signed) Joseph W. Nega
Judge

Served 11/17/21

IN THE UNITED STATES TAX COURT

)
)
)
) Docket No. 13494-20
)
)
)
)
)
)
)
)
)

P R O C E E D I N G S

(10:48 a.m.)

THE CLERK: Calling from the calendar docket
number 13494-20, James E. Van Pelt.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Joseph W. Nega
2 September 30, 2021
3 James E. Van Pelt v. Commissioner
4 Docket No. 13494-20

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

15 Petitioner James E. Van Pelt appeared pro se.
16 Brian M. Gore appeared on behalf of respondent.

17 By Notice of Deficiency dated August 19, 2020,
18 respondent determined a deficiency of \$24,884 in
19 petitioner's Federal income tax for the 2017 taxable year.
20 The issue for decision is whether petitioner is subject to
21 tax on the income as determined in the Notice of
22 Deficiency.

23 The Court finds the following facts:

24 FINDINGS OF FACT

25 Petitioner resided in Leyden, Massachusetts at



1 the time he filed his petition in this case. Some of the
2 facts have been stipulated and are so found. The first
3 stipulation of facts and exhibits attached thereto, and
4 the admitted exhibits are incorporated herein by this
5 reference. This case was tried on September 27, 2021, in
6 Hartford, Connecticut.

7 Petitioner worked as a minister at Beacon Falls
8 Congregational Church (the Church) in Beacon Falls,
9 Connecticut, where he provided ministerial services
10 throughout the 2017 taxable year. Petitioner resided in
11 the parsonage of the Church as part of his employment and
12 did not make rental payments to the Church. On April 15,
13 2018, petitioner timely filed a 2017 Form 1040, U.S.
14 Individual Income Tax Return. On his 2017 tax return,
15 petitioner self-reported \$16,632 in pension income and
16 \$1,480 in taxable Social Security benefits. Petitioner
17 did not report any wage income, despite the Church issuing
18 him a Form W-2 reporting \$63,652 in compensation for his
19 ministerial services.

20 Petitioner's 2017 return was later selected for
21 examination by respondent. Respondent proposed an
22 adjustment in the amount of \$24,884, resulting from the
23 addition of the omitted wages to gross income and
24 resulting adjustments to petitioner's taxable Social
25 Security income, self-employment adjusted gross income,



1 and self-employment tax. On August 19, 2020, respondent
2 issued a Notice of Deficiency to petitioner in that same
3 amount.

4 On November 23, 2020, petitioner timely filed a
5 petition with this Court. In both his petition and in
6 subsequent filings, petitioner has made arguments that
7 resemble those that this Court has previously deemed
8 groundless and frivolous. On September 8, 2021, the Court
9 issued an order warning petitioner that if he continued to
10 pursue such arguments, he would be potentially subject to
11 penalties under section 6673 of up to \$25,000. The Court
12 repeated this warning during the trial.

13 At trial and in petitioner's most recent filing
14 - Exhibit 1003-P - petitioner continues to advance
15 groundless arguments, namely that due to his status as a
16 minister, his wages are not subject to income tax nor
17 self-employment tax.

18 OPINION

19 In general, the Commissioner's determinations in
20 a notice of deficiency are presumed correct, and the
21 petitioner bears the burden of proving them erroneous by a
22 preponderance of the evidence. Rule 142(a)(1); Welch v.
23 Helvering, 290 U.S. 111, 115 (1933); Delaney v.
24 Commissioner, 99 F.3d 20, 23 (1st Cir. 1996).

25 Section 61(a) provides that "gross income" means



1 "all income from whatever source derived". The scope of
2 section 61(a) is broad, and exclusions from gross income
3 must be narrowly construed. Commissioner v. Schleier, 515
4 U.S. 323, 328 (1995); Commissioner v. Glenshaw Glass Co.,
5 348 U.S. 426, 429 (1955); Helvering v. Clifford, 309 U.S.
6 331, 334 (1940). JWN Petitioners seeking an exclusion from
7 gross income must demonstrate they are eligible for the
8 exclusion and bring themselves" within the clear scope of
9 the exclusion". Dobra v. Commissioner, 111 T.C. 339, 349
10 n.16 (1998). Section 61(a)(1) expressly includes in gross
11 income compensation for services rendered.

12 I. Unreported W-2 Income

13 Petitioner's primary contention is a familiar
14 tax protester refrain; he claims that he is not an
15 employee and that the compensation he received as a
16 minister is not wages and thus nontaxable. We will not
17 "refute these arguments with somber reasoning and copious
18 citation of precedent; to do so might suggest that these
19 arguments have colorable merit." Crain v. Commissioner,
20 737 F.2d 1417 (5th Cir. 1984); see also Sullivan v. United
21 States, 788 F.2d 813, 815 (1st Cir. 1986) ("Courts
22 uniformly have rejected as frivolous the arguments that
23 money received in compensation for labor is not taxable
24 income.").

25 Petitioner also appears to allege that



1 respondent's determination of his W-2 income is erroneous
2 because it includes his "employer's SSA contribution." A
3 review of the evidence produced by respondent suggests
4 that the Church paid to petitioner, as part of his
5 compensation, what were deemed "offsets" of the Social
6 Security and Medicare taxes for which petitioner was
7 responsible. Because petitioner's compensation is not
8 subject to the withholding and payment of such taxes by
9 the Church, the payments made by the Church to petitioner
10 as "offsets" of his taxable income remain includible in
11 his gross income. See, e.g., Rev. Rul. 68-507, 1968-2
12 C.B. 485 ("To the extent that the church pays any amount
13 toward the minister's obligation for income tax or self-
14 employment tax other than from the minister's salary, the
15 minister is in receipt of additional income that is
16 includible in his gross income and must be considered in
17 determining his income tax and self-employment tax
18 liability."); see also Old Colony Trust Co. v.
19 Commissioner, 279 U.S. 716, 729-31 (1929).

20 Petitioner also appears to allege in his most
21 recent filing that respondent improperly included in his
22 gross income: (1) reimbursements by the Church of his
23 employee business expenses; and (2) pension payments.
24 Petitioner provides no evidence to support these secondary
25 contentions. Similarly, petitioner raised other vague,

1 unsubstantiated claims in his most recent filing and at
2 trial, asserting entitlement to offsetting business
3 expense deductions, an exclusion, and a dependency
4 exemption but offering no evidence in support. Petitioner
5 has failed to carry his burden of demonstrating that
6 respondent's determination of additional income tax was
7 erroneous.

8 II. Determination of Self-Employment Taxes

9 Petitioner has also failed to carry his burden
10 of showing that respondent's determination of additional
11 self-employment tax was erroneous. Individuals are
12 subject to tax under section 1401 on their net earnings
13 from self-employment, which is defined as the net income
14 from any trade or business carried on by the individual.
15 See sec. 1402(a). Section 3401(a)(9) provides that
16 compensation for services paid to a "duly ordained,
17 commissioned or licensed minister of a church" (church
18 minister) is not wages for purposes of employment taxes
19 and thus not subject to withholding and payment by a
20 church employer. See sec. 3402(a); see also sec.
21 3121(b)(8). Instead, the provision of services by a
22 church minister generally constitutes a trade or business,
23 and a church minister's wages are subject to self-
24 employment tax. See sec. 1402(c)(4); id. at (c) (flush
25 language); see also Knight v. Commissioner, 92 T.C. 199,

1 201-202 (1989). While a church minister is permitted to
2 submit a certificate seeking exemption from self-
3 employment tax on religious or conscientious grounds, see
4 sec. 1402(e), petitioner has not alleged - nor does the
5 record indicate - that he timely did so for tax year 2017.

6 Petitioner performed the duties and functions of
7 a minister in his role at the Church, which included
8 leading worship services and ministering to members. See
9 sec. 1.1402(c)-5(b)(2) (setting forth applicable factors
10 for determining whether minister falls under section
11 1402). Petitioner received wages as compensation for
12 those services. Due to petitioner's status as a minister
13 under section 1402, the Church did not withhold employment
14 taxes from his compensation, which was properly subject to
15 self-employment tax. We hold that petitioner has failed
16 to demonstrate that respondent's determination of self-
17 employment tax was erroneous.

18 III. Imposition of 6673 Penalty

19 Finally, we turn to the issue of whether to
20 impose a penalty on petitioner for his frivolous
21 arguments. Section 6673 authorizes the Tax Court on its
22 own accord to impose a penalty not in excess of \$25,000
23 when it appears that (1) the proceedings have been
24 instituted or maintained primarily for delay or; (2) the
25 taxpayer's position in such proceeding is frivolous or

1 groundless. A position maintained by the taxpayer is
2 "frivolous" where it is "contrary to established law and
3 unsupported by a reasoned, colorable argument for change
4 in the law." Coleman v. Commissioner, 791 F.2d 68, 71 (7th
5 Cir. 1986); see also Hansen v. Commissioner, 820 F.2d
6 1464, 1470 (9th Cir. 1987) (affirming section 6673 penalty
7 because taxpayer should have known claim was frivolous).
8 The Court is given full discretion in deciding whether to
9 impose the penalty. See Neonatology Associates, P.A. v.
10 Commissioner, 115 T.C. 43, 102 (2000), aff'd, 299 F.3d 221
11 (3d. Cir. 2002).

12 We find that petitioner has advanced a frivolous
13 and groundless argument in this proceeding. In his
14 petition, petitioner contended that he is a "worker of
15 common right and a nontaxpayer" and thus "not subject to
16 the jurisdiction of revenue law because of his
17 occupation." Despite the Court's warning in its order of
18 September 8, 2021 that such an argument is frivolous,
19 petitioner has continued to advance it in his most recent
20 filing (Exhibit 1003-P) and at trial. In his most recent
21 filing, petitioner continues to claim that his
22 compensation is excluded from gross income and that he is
23 not subject to self-employment tax. These contentions
24 have no merit and reflect common tax protestor arguments.
25 See, e.g., Wells v. Commissioner, T.C. Memo. 2019-134

1 (imposing \$10,000 section 6673 penalty where petitioners
2 made the frivolous contention that they were not employees
3 and their wages were not taxable income).

4 Petitioner has been warned multiple times that
5 his arguments were frivolous and that the Court would
6 consider imposing a penalty should he continue to advance
7 them. Petitioner has done just that. Under such
8 circumstances, we believe the imposition of a penalty
9 under section 6673(a)(1) in the amount of \$2,500 is
10 warranted here. Accordingly, a decision will be entered
11 for respondent.

12 IV. Conclusion

13 In reaching our holdings herein, we have
14 considered all arguments made by the parties, and to the
15 extent not mentioned above, find those arguments moot,
16 irrelevant, or without merit. This concludes the Court's
17 oral Findings of Fact and Opinion in this case.

18 (Whereupon, at 11:05 a.m., the above-entitled
19 matter was concluded.)
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: James E. Van Pelt v. Commissioner

DOCKET NO.: 13494-20

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 12 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Gary Baldwin on September 30, 2021 before the United States Tax Court at its remote session in Hartford, CT, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.



Meribeth Ashley, CET-507

10/5/21

Transcriber

Date



Lori Rahtes, CDLT-108

10/5/21

Proofreader

Date

