Why most people will lose the moment they file their Tax Court Petition

This is an article about a real man that has used good Administrative Remedies with the IRS each step of the way but the IRS has ignored every item sent. The setting is the “non-taxpayer” has just received a 90 day “Notice of Deficiency" and so the next Administrative Remedy step is either (a) file lawsuit in District Court or (b) file a Tax Court Petition. If you know how to do a District Court lawsuit that is the preferred step. This man is filing a Tax Court Petition.

Now the purpose of this article: Why most people will lose the moment they file their Tax Court Petition?

The U.S. Tax Court provides a sample fill in the blanks Petition on their web site http://www.ustaxcourt.gov/notice.htm

The next page shows the format for a Tax Court Petition.

FORM 1

PETITION (Other Than In Small Tax Case)

(See Rules 30 through 34)

UNITED STATES TAX COURT

..... Petitioner(s) v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

PETITION

The petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in the Commissioner's notice of deficiency (or liability) [Service symbols] dated ....., and as the basis for the petitioner's case alleges as follows:

1. The petitioner is [set forth whether an individual, fiduciary, corporation, etc., as provided in Rule 60] with mailing address now at

.....
Street City State Zip Code

and with legal residence (or principal office) now at [if different from the mailing address]

.....
Street City State Zip Code

Petitioner's taxpayer identification number (e.g., Social Security or employer identification number) is .....

The return for the period here involved was filed with the Office of the Internal Revenue Service at .....
City State

2. The notice of deficiency (or liability) (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioner on ....., and was issued by the Office of the Internal Revenue Service at .....
City State

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year ....., in the amount of $....., of which $..... is in dispute.

4. The determination of the tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner. Do not plead facts, which properly belong in the succeeding paragraph.]

5. The facts upon which the petitioner relies, as the basis of the petitioner's case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor. Set forth the allegations in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired].

(Signed) .....
Petitioner or Counsel

.....
Present address—City, State, Zip Code

Dated: .....

.....
Telephone (include area code)

.....
Counsel's Tax Court Bar Number

As you can see the Tax Court Petition is a simple form and MOST people just complete a simple one - three page Petition and file it. The moment they file that simple Petition they have LOST the tax court case. Why? They failed to read the rules that govern U.S. Tax Court. Here is Rule 34 "Petition" from the web site http://www.ustaxcourt.gov/notice.htm

on whose behalf the pleading is filed. If a pleading is not signed, it shall be stricken, unless it is signed promptly after the omission is called to the attention of the pleader. If a pleading is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable counsel's fees.

RULE 34. PETITION

(a) General: (1) *Deficiency or Liability Actions:* The petition with respect to a notice of deficiency or a notice of liability shall be substantially in accordance with Form 1 shown in Appendix I, and shall comply with the requirements of these Rules relating to pleadings. Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to such person and one or more other persons or to a husband and a wife individually, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule in order for the petition to be treated as filed by or for such person. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, electronically transmitted copy, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62. For the circumstances under which a timely mailed petition will be treated as having been timely filed, see Code section 7502.

[1](2) *Other Actions:* For the requirements relating to the petitions in other actions, see the following Rules: Declaratory judgment actions, Rules 211(b), 311(b); disclosure actions, Rule 221(b); partnership actions, Rules 241(b), 301(b); administrative costs actions, Rule 271(b); abatement of interest actions, Rule 281(b); redetermination of employment status actions, Rule 291(b); determination of relief from joint and several liability on a joint return actions, Rule 321(b); and lien and levy actions, Rule 331(b). As to joinder of parties in declaratory judgment actions, in disclosure actions, and in partnership actions, see Rules 215, 226, and 241(h) and 301(f), respectively.

(b) Content of Petition in Deficiency or Liability Actions: The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, its name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number) and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The mailing address, legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the city and State of the office of the Internal Revenue Service which issued the notice.

(3) The amount of the deficiency or liability, as the case may be, determined by the Commissioner, the nature of the tax, the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of taxes in controversy.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed

[1] The amendments are effective as of June 30, 2003.

by the Commissioner in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(8) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the issues raised by the assignments of error likewise shall be appended to the petition. A claim for reasonable litigation or administrative costs shall not be included in the petition in a deficiency or liability action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

[1]**(c) Content of Petition in Other Actions:** For the requirements as to the content of the petition in a small tax case, see Rule 173(a). For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), (f), and (g), Rule 221(c), (d), and (e), Rule 241(c), (d), and (e), Rule 271(b), Rule 281(b), Rule 291(b), Rule 301(b), Rule 311(b), Rule 321(b), and Rule 331(b).

(d) Number Filed: For each petition filed, there shall be a signed original together with two conformed copies.

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[1] The amendments are effective as of June 30, 2003.

What was so important within Rule 34 (b)(4)
"Any issue not raised in the assignments of error shall be deemed to be conceded"

So, if you did not raise the “issue” within your Petition in the “assignments of error” it is “deemed to be conceded”.

Here is what that means in actual practice.

(1) If good Administrative Remedies are not done AS YOU GO ALONG you are in trouble when you file your Tax Court Petition beause you must list all "issues" in your “assignment of errors” or you have “conceded” any “issues” not listed.
(2) You can not raise <u>any</u> “issue” at any future time if not raised within your original Petition.
(3) You can not conduct discovery on <u>any</u> “issues” not raised within your original Petition.
(4) Judge can listen to any “issue” you raise later but simply ignore you because you stipulated/conceded the point by not listing the "issue" within your Tax Court Petition.

The actual Tax Court Petition this “non-taxpayer” filed was 74 pages plus 16 pages in Exhibits A-D. Below is a sample “assignments of errors” at “issue” and listed in this Tax Court Petition.

Important note:
Exhibit B was a copy of the IRS IMF (Individual Master File) from a FOIA request.
Exhibit C was a copy of the IRS TXMODA transcript from a FOIA request.
Exhibit D was a copy of the IMF & TXMODA decoded into plain english report from the MF Decode software contained on your Administrative Remedies CDROM.

TAX COURT PETITION ASSIGNMENTS OF ERROR

A. IRS Agents error in presuming jurisdiction under assumption Proper Name is a “U.S. citizen” and also an “enemy” of the Republic when in fact Proper Name is NOT a U.S. citizen but in fact is a California National, a member of the Republic

B. IRS Agents error as proper jurisdiction was properly challenged each step of the administrative process but was ignored and unanswered.

C. IRS Agents error in presuming jurisdiction under assumption Proper Name is a “U.S. resident” within the “United States” as defined at *26* USC 77091(a)(9) which does not embrace the sovereign territory of the *50* states of the Union.

D. IRS Agents error in presuming jurisdiction under assumption Proper Name is a beneficiary of the 14th Amendment public trust and “subject to” Title 26 taxes.

Proper Name has not accepted the offer to become a beneficiary of the 14th amendment public trust. Proper Name requests no benefits or privileges from government or any of its instrumentalities. Proper Name has no intention of receiving any benefits or privileges from government or any of its instrumentalities. Proper Name forfeits any and all benefits or privileges offered by government or any of its instrumentalities. Proper Name does not voluntarily consent to any compelled benefits or privileges from government or any of its instrumentalities and any compelled use of same is "without prejudice" UCC 1-207.

E. IRS Agents error as no international maritime contract (or other contact) exists wherein Proper Name is in privity with the Internal Revenue Service. The IRS is acting as a third party debt collector under some undisclosed contract for some undisclosed third party. [Commissioner has Burden of proof that a contact exists to compel me with a "duty" and "obligation" to perform and if no contact is produced must provide a "liability" statute to make me "liable" to issue a Notice of Deficiency]

F. IRS Agents error as the Internal Revenue Service is not a "real party in interest" in this matter.

G. IRS Agents error assuming Proper Name was a fictional entity and send him BMF related CP 515 and CP 518 demands to produce tax returns, when Proper Name is a man.

H. IRS Agents error as no Federal jurisdiction exists over the location Proper Name dwells at or worked at per 40 U.S.C.S. §255 with special reference to note #14; without the Federal Government providing proper "Notice of Acceptance" filed by the Federal government with the Governor of California plus any and all other documents necessary under statutory requirements of 40 U.S.C.S. §255 .

I. IRS Agents error as Proper Name does not reside within any Federal Territory hence Federal Jurisdiction does not exist to make Proper Name "subject to" Title 26 of United States Code Title 26, Subtitle A & C.

J. IRS Agents error as the Social Security Act, the Federal Insurance Contribution Act, and the Current Tax Payment Act of 1943 are acts passed by Congress under the exclusive authority of Article 1, Section 8, Clause 17 and Article IV, Section 3, Clause 2 of the Constitution of the United States and these laws do not apply to Proper Name. [Federal Rules of Criminal Procedures, Rule 54 *" 'Act of Congress' includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession."*]

K. IRS Agents error in presuming jurisdiction under assumption Proper Name lived within the "State" as defined at *26* USC 7701(a)(10) which does not include the *50* states of the Union.

L. IRS Agents error in presuming authority under the assumption the IRS is a "agency" of the United States government.

See (a) *March 29, 1974 Federal Register page 11,572* "Congress intended to create Bureau of Internal Revenue or thought they had."
(b) Internal Revenue Manual 1100 Section 1111.2(3) "Also it can be seen that Congress had intended to establish a Bureau of Internal Revenue, or thought they had . . . In other words, 'the office of internal revenue' was 'the bureau of internal revenue,' and the act of July 1, 1862, is the organic act of today's Internal Revenue Service."
(c) CHRYSLER CORP. v. BROWN, 441 U.S. 281, (1979) Footnote 23 "There was virtually no Washington bureaucracy created by the Act of July 1, 1862, ch. 119, [12 Stat. 432], the statute to which the present Internal Revenue Service can be traced."
(d) Diversified Metal Products v T-Bow Company, Internal Revenue Service United States Answer and Claim #4 says "Denies that the Internal Revenue Service is an agency of the United States Government" and
(e) 26 CFR 31.6011(b)-2(b)(iv) "if services are preformed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico."

[Commissioner has Burden of proof that the Internal Revenue Service is an "agency" of the United States Treasury Department of Washington, D.C. (not the Treasury Department of Puerto Rico) to have jurisdiction to issue a Notice of Deficiency]

M. The IRS Agents are operating under color of authority representing the Government of the United States and are in reality a "revenue agent" of a foreign principal. Revenue Agent is defined at 27 CFR § 250.11, "*Revenue Agent. Any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico*"

N. IRS Agents error since aside from places designated as official United States Ports of Entry, the President of the United States (or authorized delegate) has not created or designated "revenue districts" within the sovereign lands of the states of the Union under the authority of 26 USC §7621 and Executive Order #10289. Proper Name does not live within an Internal Revenue District to become "subject to" Title 26 Subtitle A & C taxes.

O. IRS Agents error since 26 CFR § 601.101 says IRS personnel have jurisdiction for examination and collection only within internal revenue districts and Proper Name does not dwell within an Internal Revenue District.

P. IRS Agents error as Proper Name is not made "liable" for personal income tax by 26 USC 1, therefore if Congress did not create the "liability" the IRS regulations 26 C.F.R. 1.1-1 can not create any legal "liability".

Q. IRS Agents error since Proper Name is not a "fiduciary" or "accommodation party" for ALL CAPS NAME. ALL CAPS NAME© is copyrighted tradename property owned by Whomever who is the holder of the registered perfected security interest. IRS Agents has no authorization to use Whomever's private property, ALL CAPS NAME©,

for commercial gain without permission and providing compensation to use this private property

R. Proper Name is a Citizen of a state of the Union with the unlimited right to enter into a **private contact** within the private sector contracting to exchange his labor which is private property for compensation.

S. IRS Agents error in making an incorrect legal determination that Proper Name was classified as a "taxpayer". Proper Name has made the legal determination that Proper Name is a "non-taxpayer".

T. IRS Agents error in issuing a Notice of Deficiency before the required "assessment" was made as required per 26 CFR 601.103(a).

U. IRS Agents error as they have no authority to issue a Substitute for Return defined at IRM Exhibit 20.1.1.6-8 (08-20-1998) "Dictionary of Key Terms" in regards to Form 1040, 1040A or 1040X Substitute for Return per IRM Section 5.1.11.9 "IRC 6020(b) Authority".

V. IRS Agents error in determining "gross receipts" is the same as "taxable income" or "income" as shown by these Supreme Court cases which define "income".

> *Merchants Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921), the US Supreme Court held that, *"...the word 'income' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909."*
> *Southern Pacific Co. v. Lowe*, 247 U.S. 330 (1918), the US Supreme Court stated, *"Certainly the term 'income' has no broader meaning in the Revenue Act of 1913 than in that of 1909…"*
> *Doyle v. Mitchell Brothers, Co*., 247 U.S. 179 (1918), the US Supreme Court stated, *"Whatever difficulty there may be about a precise and scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."*
> *Merchants Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921),* the US Supreme Court held that, *"The word [income] must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now become definitely settled by decisions of this Court".*

W. IRS Agents error in the presumption that Social Security Taxes withheld by Private Company Name were authorized by Proper Name signing a W-4 Voluntary Withholding Agreement. When the fact is no W-4 was every signed by Proper Name and any withholdings made have been unlawful extortion.

X. IRS Agents error as W-4 information from Private Company Name used to create the Notice of Deficiency is unverified hearsay and IRS Agents under Rules of Evidence Rule 602 "Lack of Personal Knowledge" have no personal knowledge in this matter.

Y. IRS Agents error when they determined "trade or business" as defined at 26 USC 7701(a)(26) included Proper Name's private activities while working as a private man within the private sector.

Z. IRS Agents error as there is no statute anywhere in Subtitle A and/or Subtitle C of the Internal Revenue Code which makes Proper Name liable for the tax imposed in 26 U.S.C. §1 or 26 U.S.C. §871.

AA. Internal Revenue Agent Dennis L. Parizek error in issuing a "Notice of Deficiency" when he demanded a Form 1040 Return in his letter to me and was provided a signed Form 2848 "Power of Attorney" to complete a Form 1040 "Individual Income Tax Return" on behalf of ALL CAPS NAME.

BB. IRS Agents Parizek and Thomas D. Mathews error acting outside their authority as they only have pocket commissions that authorize them to do administrative functions and not enforcement functions per IRM [1.16.4] 3.1 (02-19-1999).

CC. IRS Agents error in sending a Notice of Deficiency without having the delegated authority from the Secretary of the Treasury to "determine" that there is a deficiency under 26 U.S.C. 6212.

DD. IRS Agents error in relying on inaccurately reported W-2 statement from Private Company Name that mistakenly reported ALL CAPS NAME had Estate and/or Gift taxable income. IRS Agents failed to do the required Verification of IRP (Information Return Processing) Documents after being notified the reported W-2 was inaccurate per IRM 4.19.1.6.13 (10-01-2001) Non-filer Case Processing *"circumstances suggest that the information report is not reliable or accurate, do not include the income item in the non-filers income"*.

EE. IRS Agents error in not following procedures and providing proper due process administrative responses or remedies to all of the following documents:

(1) Notice of Affidavit Statement in Rebuttal to Internal Revenue Code Section 6011 for Year Period ending December 31, 2001; dated _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(2) Notice of Default in Affidavit Form dated _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(3) Reply to improperly issued BMF CP 515 letter received by the IRS on _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(4) Reply to improperly issued BMF CP 518 letter received by the IRS on _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(5) Reply to D. Parizek received on _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(6) Request for Status Determination dated _____ and incorporated herein by reference with all issues raised therein reserved within this petition.
(7) Settlement offer letter to Mr. Parizel & Mathews dated _____ and incorporated herein by reference with all issues raised therein reserved within this petition.

FF. IRS agents error as the IMF (Individual Master File) contains a great many data errors and inconsistencies as it applies to Proper Name for Year making the basis of the Notice of Deficiency a fabrication. IRS Agents have no Personal Knowledge per Rules of Evidence Rule 602. List of IMF errors is itemed in numbers 1-15 below this paragraph. [Petitioners Exhibit "B" is IMF MCC Transcript Complete, Exhibit "C" is

TXMODA transcript and Exhibit ”D” is IMF & TXMODA decoded into English]

LIST of specific IMF & TXMODA ERRORS