

FILED
IN THE UNITED STATES TAX COURT

2013 AUG -2 PM 3:12 2013 AUG -2 PM 3:17

VINCENT J. FUMO

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

BY: AKG
DEPUTY CLERK

Docket No.

PETITION

Petitioner, by and through his undersigned counsel, hereby seeks a re-determination of deficiencies and penalties/additions to tax set forth by the Commissioner of Internal Revenue (hereinafter "Respondent") in Respondent's Notice of Deficiency dated May 14, 2013. As the basis for his case, Petitioner alleges as follows:

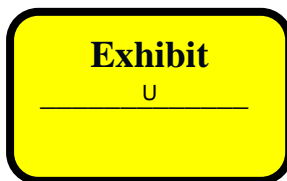
Address Used By Court

1. Petitioner is an individual with a lawful residence at 2220 Green Street, Philadelphia, Pennsylvania 19130.¹

2. The Notice of Deficiency was mailed to Petitioner on May 14, 2013 and was issued by the Office of Internal Revenue Service at Philadelphia, Pennsylvania. A copy of the redacted Notice of Deficiency, including so much of the statements and schedules accompanying the notice as is material, is attached hereto as Exhibit "A."

3. The deficiencies and additions to tax/penalties as determined by Respondent

¹ Although Petitioner resides at 2220 Green Street in Philadelphia, Pennsylvania, he is currently serving a prison sentence at the Federal Prison Camp at Ashland, Kentucky, the address to which Respondent mailed the May 14, 2013 Notice of Deficiency.



SERVED Aug 14 2013

concern purported gift tax liabilities in the following amounts and are in dispute in their entirety:²

<u>Tax Year</u>	<u>Deficiency</u>	<u>Addition to Tax/Penalty for Failing to File Under I.R.C. § 6651(a)(1)</u>	<u>Addition to Tax/Penalty for Failing to Pay Under I.R.C. § 6651(a)(2)</u>
December 31, 2009	\$327,895.00	\$73,776.00	<i>To be computed later</i>

4. Respondent's determinations as set forth in the attached Notice of Deficiency are based upon the following errors:

- a. Respondent erroneously determined that during 2009 Petitioner made a \$920,000 gift to his son, Vincent E. Fumo.
- b. Respondent erroneously applied the addition to tax under I.R.C. § 6651(a)(1).
- c. Respondent erroneously applied the addition to tax under I.R.C. § 6651(a)(2).
- d. Respondent has acted arbitrarily and capriciously, as well as vindictively, towards Petitioner in issuing the Notices of Deficiency and the jeopardy assessments.

² It should be noted that on or about March 21, 2013, Respondent wrongfully assessed the amounts in dispute by invoking jeopardy assessment procedures outlined at I.R.C. §§ 6861 and 7429, 26 U.S.C. §§ 6861 and 7429. Petitioner commenced an action before the United States District Court for the Eastern District of Pennsylvania challenging Respondent's jeopardy assessments. That case remains pending and is captioned at *Vincent J. Fumo v. United States of America*, Civil Action No. 13-03313 (U.S.D.C. E.D.Pa.).

5. The facts upon which Petitioner relies as the basis for Petitioner's case are as follows:

- a. During 2009, Petitioner made no cash gifts over the annual exclusion to his son, Vincent E. Fumo, and certainly did not make a cash gift remotely approximating \$920,000.
- b. Since Petitioner made no reportable/taxable gifts during 2009 to his son, Vincent E. Fumo. Petitioner was not required to file a gift tax return. There is no gift tax deficiency. Hence, there can be no addition to tax under I.R.C. § 6651(a)(1).
- c. Since Petitioner made no reportable/taxable gifts in 2009 to his son, Vincent E. Fumo, there is no deficiency. Hence, there can be no addition to tax under I.R.C. § 6651(a)(2).
- d. Respondent has acted arbitrarily and capriciously, as well as vindictively, towards Petitioner in issuing the Notices of Deficiency and the jeopardy assessments.
- e. Respondent seeks to punish/harass/intimidate Petitioner for exercising his constitutional right to proceed to trial in the matter of *United States v. Vincent J. Fumo*, Criminal Docket No. 06-391-03 (U.S.D.C. E.D.Pa.).
- f. Respondent lacks any credible basis to support the proposition that Petitioner made reportable/taxable gifts during 2009 totaling \$920,000,00.

WHEREFORE, it is respectfully requested that this Court try this case and determine that Respondent has erroneously determined the deficiency and additions to tax described above.

Respectfully submitted,

Dated: July 29, 2013

By: Mark E. Cedrone ADMITTED NOT RECOGNIZED

Mark E. Cedrone, Esquire
Tax Court I.D. No. CM0455
123 South Broad Street – Suite 810
Philadelphia, PA 19109
(215) 925-2500
mec@cedrone-law.com

Department of the Treasury
Internal Revenue Service

Vincent J. Fumo
FCI Ashland Satellite Camp

#62033-066
PO Box 6000
Ashland, KY 41105

Date: MAY 14 2013

Form Number:
709

Taxpayer Identifying Number:

Tax Year Ended:
December 31, 2009

Person to Contact:
B. Basch

Employee Identification Number:
0213152

Contact Telephone Number:
215-861-3860

Last Day to File a Petition With the
United States Tax Court:

AUG 12 2013

CERTIFIED MAIL

Calendar Period	Deficiency	Additions to the Tax - IRC	
		Section 6651(a)(1)	Section 6651(a)(2)
December 31, 2009	\$327,895	\$73,776	To be computed at a later date

Dear Mr. Fumo:

This letter is to notify you as required by law; that we have determined the deficiencies in tax shown above. We have enclosed a statement explaining how we figured them. An assessment has been made with respect to these deficiencies as shown on the attached schedule. Assessments were made under the Internal Revenue laws that apply to jeopardy assessments.

If you do not agree with our determination, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the Clerk of the Tax Court at the address below.

United States Tax Court, 400 Second Street, NW, Washington, DC 20217

The Tax Court has a simplified procedure for small tax cases when the amount in dispute for each tax year is \$50,000 or less. If you intend to file a petition for multiple tax years and the amount in dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you. If you use this simplified procedure, you cannot appeal the Tax Court's decision. You can get information pertaining to the simplified procedure for small cases from the Tax Court by writing to the court at the above address or from the court's website at www.ustaxcourt.gov.

Send the completed petition, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the above address. The Court cannot consider your case if the petition is filed late. The petition is considered timely filed if the postmark date by the United States Postal Service or by a designated private carrier falls within the prescribed 90 or 150 day period and the envelope containing the petition is properly addressed with the correct postage. For a list of designated private carriers available for domestic and international mailings, see the Tax Court Website (www.ustaxcourt.gov).

The time you have to file a petition with the court is set by law and cannot be extended or suspended. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS will not change the allowable period for filing a petition with the Tax Court.

As required by law, separate notices are sent to husbands and wives. If this letter is addressed to both husband and wife, and both want to petition the Tax Court, both must sign and file the petition or each must file a separate, signed petition. If more than one tax year is shown above, you may file one petition form showing all of the years you are contesting.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

If you decide not to file a petition with the Tax Court within the time limit, we will complete the processing of your case after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).

Important Note: If you are a "C" corporation, the law requires us to charge you an interest rate that is two percent higher than the normal rate on deficiencies of \$100,000 or more.

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency,"* for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,

Steven T. Miller
Commissioner

By *William England* BDE
William England, Territory Manager
Technical Services - Central Area

Enclosures:
Explanation of tax changes
Notice of Deficiency Statement
Notice 1214

Letter 531-J (10-2009)
Catalog Number 51828E

Form 4089-A (Rev. April 1982)	Department of the Treasury - Internal Revenue Service Notice of Deficiency Statement	Symbols
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Name, SSN or EIN and Address of Taxpayer

SSN:

Vincent J. Fumo
 FCI Ashland Satellite Camp
 #62033-066
 PO Box 6000
 Ashland, KY 41105

Kind of Tax

Gift

Tax Year Ended	Deficiency (Increase in Tax and Penalties)
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Summary of Jeopardy Assessments

Calendar Period

Tax

Penalties

Assessment of this deficiency has been made against you under the provisions of Internal Revenue laws applicable to jeopardy assessments.

December 31, 2009	\$327,895	IRC §6651(a)(1) \$73,776 IRC §6651(a)(2) To be computed at a later date
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<input checked="" type="checkbox"/>	Copy to Authorized Representative: Mark E. Cedrone The Law Offices of Mark E. Cedrone, P.C. 123 South Broad Street Suite 810 Philadelphia, PA 19109
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Schedule of Assessments or (Abatements)

	Calendar Period December 31, 2009
Jeopardy/Termination Assessment	\$327,895
Deficiency	\$327,895
To Be Assessed/(Abated)	\$-0-
- Delinquency Penalty IRC 6651(a)(1)	\$ 73,776
- Delinquency Penalty IRC 6651(a)(2)	To be computed at a later date

Form 3615-A		Department of the Treasury - Internal Revenue Service Schedule		
		Gift Tax		
		(For Donors Making Gifts After December 31, 1976)		
Name	Period Ending			
Vincent J. Fumo	2009			
Taxable gifts shown in	0			
<input checked="" type="checkbox"/> Return as Filed				
<input type="checkbox"/> Preliminary Letter				
<input type="checkbox"/> Statutory Notice				
Change in taxable gifts				
Adj. to gifts on donor	920,000			
Adj. to ann. exclusions	<13,000>			
Taxable gifts	907,000			
Prior period gifts	854,989			
Total taxable gifts	1,761,989			
T a x C o m p u t i o n	1. Tax on total	673,695		
	2. Tax on prior	289,246		
	3. Total tax	384,449		
	4. UC, table	345,800		
	5. UC, prior	289,246		
	6. Balance	56,554		
	7. 20% SE after	0		
	8. Balance	56,554		
	9. Unified Credit	56,554		
	10. Foreign GTC	0		
	11. Total	56,554		
	12. Gift tax due	327,895		
	13. GST taxes	0		
	14. Total taxes	327,895		
	15. Prev. tax	0		
	16. Tax change	327,895		
	17. Penalty change §6651(a)(1)	73,776	§6651(a)(2)	To be computed at a later date
	18. Total change	401,671		

Form 886A (Rev. 1/99)		Department of the Treasury - Internal Revenue Service	
Explanation of Items			
Donor Vincent J. Fumo	Social Security Number [REDACTED]	Date of Gift 2009	
Sch. A1, Gift of Donor w/out GST			
	Description	Shown on Return	As Corrected
1	Cash	0	920,000
	Total of these items	0	920,000
	Shown on Return		0
	Change to schedule		920,000

It is determined that on or about the below listed dates, the donor made gifts of cash in the below listed amounts to his son, Vincent E. Fumo. Accordingly, taxable gifts are increased \$920,000.

August 19, 2009: \$ 500,000
September 2, 2009: \$ 250,000
September 10, 2009: \$ 100,000
October 5, 2009: \$ 70,000

Form 886A (Rev. 1/99)	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Donor Vincent J. Fumo	Social Security Number [REDACTED]	Date of Gift 2009

6. Total annual exclusions

	Description	Shown on Return	As Corrected
1	Annual Exclusion	0	13,000
	Total of these Items	0	13,000
	Shown on Return		0
	Change to schedule		13,000

A gift tax annual exclusion is allowable in the amount of \$13,000 pursuant to IRC § 2503(b) for gifts made to Vincent E. Fumo during the 2009 calendar year. Accordingly, taxable gifts are decreased \$13,000.

Form 886A (Rev. 1/99)	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Donor Vincent J. Fumo	Social Security Number [REDACTED]	Date of Gift 2009

16. Taxable gifts for prior periods

Description	Shown on Return	As Corrected
Taxable Gifts for Prior Periods	755,151	854,989
Shown on Return		755,151
Change to prior gifts		99,838

22. Unified credit, prior periods

Description	Shown on Return	As Corrected
Unified Credit for Prior Periods	250,309	289,246
Shown on Return		250,309
Change to prior unified credit		38,937

Worksheet -- Gifts From Prior Periods

Period: 2005

IRS Office where filed: Not Filed

Unified Credit used for Period

2,168

Specific Exemption used for Period

0

Taxable Gifts for Period

11,838

Period: 2006

IRS Office where filed: Cincinnati

Unified Credit used for Period

252,758

Specific Exemption used for Period

0

Taxable Gifts for Period

755,151

Period: 2008

IRS Office where filed: Not Filed

Unified Credit used for Period

34,320

Specific Exemption used for Period

0

Taxable Gifts for Period

88,000

Total unified credit against gift tax for periods after 12/31/76

289,246

Total specific exemption for prior periods ending before 1/1/77

0

Total taxable gift for prior periods

854,989

Excess of total specific exemption claimed over \$30,000

0

Total amount of taxable gifts for prior periods, as adjusted

854,989

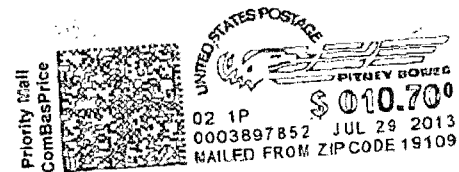
In computing the donor's gift tax liability for the calendar year 2009, it is determined that the total amount of the donor's taxable gifts for preceding periods is \$854,989. Accordingly, the gifts for preceding periods is increased \$99,838.

Form 886A (Rev. 1/99)		Department of the Treasury - Internal Revenue Service	
Explanation of Items			
Donor Vincent J. Fumo	Social Security Number [REDACTED]	Date of Gift 2009	
35. Penalties			
	Description	Shown on Return	As Corrected
1	Failure to File IRC Section 6651(a)(1)	0	73,776
*2	Failure to Pay IRC Section 6651(a)(2)	0	To be computed at a later date
	Total of these items	0	73,776
	Shown on Return		0
	Change to schedule		73,776

Item 1. It is determined that since the gift return for the taxable year ended December 31, 2009 was not filed within the time prescribed by law and it has not been shown that such failure was due to reasonable cause, an addition to tax of four and one-half (4.5)% per month up to a maximum of twenty-two and one-half (22.5)% of the tax not paid before the date prescribed for payment of the tax, is added to the tax as provided by IRC section 6651(a)(1). Accordingly, an addition to the tax is imposed of \$73,776.

*Item 2. It is determined that since the gift tax for the taxable year ended December 31, 2009 was not paid within the time prescribed by law, and it has not been shown that such failure was due to reasonable cause, an addition to tax of one-half (0.5) percent per month (or part of a month) up to a maximum of twenty-five (25)% of the tax shown on the return that was not paid before the date prescribed for payment of the tax, is added to the tax as provided by IRC section 6651(a)(2). The amount of the addition to tax will be computed at a later date.

The Law Offices of Mark E. Cedrone, P.C.
123 South Broad Street
Suite 816
Philadelphia, PA 19109



17754-13

Postmeter
JUL 29 2013

Charles Casazza, Clerk
United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217



Label 107R, January 2008