

UNITED STATES
INTERNAL REVENUE SERVICE

IN THE UNITED STATES TAX COURT

2013 JUL 31 PM 12: 58

FILED
U.S. TAX COURT
ROBERT R. DITROLIO, CLERK

2013 JUL 31 PM 1: 01

BY: CMB
DEPUTY CLERK

VINCENT J. FUMO

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 17614-13

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 10, 2013. As the basis for his case, Petitioner alleges as follows:

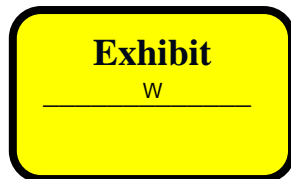
Address Used By Court

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 10, 2013 and was issued by the Office of Internal Revenue Service at Dallas, Texas. 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 are

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 10, 2013 Notice of Deficiency.



for excise taxes for the calendar years 2002 – 2004 in the following amounts and are in dispute in their entirety:²

<u>Fiscal Year Ended</u>	Deficiency – 1st Tier Excise Taxes (I.R.C. § 4958(a)(1))	Deficiency – 2nd Tier Excise Taxes (I.R.C. § 4958(b))	Failure to File Additions to Tax/Penalty (I.R.C. § 6651(a)(1))
December 31, 2002	\$71,330.30	\$316,642.36	\$17,832.58
December 31, 2003	\$96,005.51	\$512,923.34	\$24,001.38
December 31, 2004	\$24,115.82	\$192,926.58	\$6,028.96

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

- a. Respondent has erroneously concluded that Petitioner fraudulently engaged in excess benefits transactions with the Citizens Alliance for Better Neighborhoods ("CABN") within the meaning of I.R.C. § 4958(c)(1).
- b. Respondent erroneously determined that Petitioner is a disqualified person within the meaning of I.R.C. § 4958(f)(1).
- c. Respondent erroneously determined that Petitioner engaged in excess benefits transactions with, and received benefits from, CABN, as follows:

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.).

<u>Issue</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Consumer Goods	\$10,652.30	\$4,018.87	\$508.24
Vehicles (Excluding 2002 Jeep Wrangler)	\$20,957.59	\$53,111.87	\$12,983.97
Tasker Street	\$74,138.52	\$93,148.13	\$53,433.81
Cell Phones	\$3,892.35	\$2,003.00	\$2,870.27
Use of Employees	\$1,740.57	\$4,028.15	\$0.00
Farm Equipment	\$0.00	\$71,813.65	\$0.00
Political Polling	\$28,000.00 \$16,800.00 \$16,950.00 \$34,250.00 \$10,000.00 \$5,500.00 \$15,500.00	\$39,899.47 \$33,536.00 \$54,124.91	\$0.00
Ventnor Dunes	\$21,689.85	\$5.00	\$0.00
Cuba Trips	\$22,000.00	\$5,000.00	\$0.00
Gazela Painting	\$0.00	\$23,333.00	\$26,667.00
Frank Wallace	\$3,250.00	\$0.00	\$0.00
Total Excess Benefits	\$285,321.18	\$384,022.05	\$96,463.29

d. Based on the determinations set forth in ¶4(c) above, Respondent erroneously determined that Petitioner is liable for 1st tier excise taxes for the years 2002 – 2004 as follows:

<u>Tax Year</u>	<u>Amount</u>
December 31, 2002	\$71,330.30
December 31, 2003	\$96,005.51
December 31, 2004	\$24,115.82

- e. Based on the determinations set forth in ¶4(c) above, Respondent erroneously determined that Petitioner is liable for 2nd tier excise taxes for the years 2002 – 2004 as follows:

<u>Tax Year</u>	<u>Amount</u>
December 31, 2002	\$316,642.36
December 31, 2003	\$512,923.34
December 31, 2004	\$192,926.58

- f. Respondent erroneously determined that Petitioner is liable for additions to tax for failing to file a return under I.R.C. § 6651(a)(1) as follows:

<u>Tax Year</u>	<u>Amount</u>
December 31, 2002	\$17,832.58
December 31, 2003	\$24,001.38
December 31, 2004	\$6,028.96

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

- a. Petitioner did not receive excess benefits from CABN as set forth in the Notice of Deficiency.

- b. Petitioner is not a disqualified person within the meaning of I.R.C. § 4958(f)(1).
- c. Respondent is collaterally estopped from asserting that Petitioner engaged in certain direct and/or indirect excess benefits transactions with CABN. Specifically, Respondent is collaterally estopped from alleging that Petitioner received any benefit from CABN during 2002 - 2004. The issue of whether Petitioner received benefits from CABN was authoritatively determined in Petitioner's favor by the United States District Court for the Eastern District of Pennsylvania in the matter of *United States v. Vincent J. Fumo*, Criminal No. 06-319-03 (U.S.D.C. E.D.Pa). Because Respondent's interests were adequately represented in that matter and, because the matter at issue here, i.e., Petitioner's receipt of benefits from CABN, was fully and fairly litigated before the district court, collateral estoppel bars Respondent from asserting the proposed adjustments.
- d. Respondent's proposed adjustments and the jeopardy assessments already issued (*see supra* note 2) are barred by the applicable statute of limitations.
- e. With respect to the 2nd tier excise taxes (*see* ¶¶3 and 4(e) above), Petitioner cannot be held accountable because, as a result of his conviction in *United States v. Vincent J. Fumo*, Criminal Docket No. 06-319-03 (U.S.D.C. E.D.Pa.), Petitioner has made restitution to CABN. Petitioner's conviction and associated restitution should not be viewed as supporting the proposition that Petitioner received benefits from CABN. Petitioner's.

- conviction and associated restitution evidence only that Petitioner may have caused a loss to CABN, but do not establish that he received any benefit(s).
- f. Respondent has acted arbitrarily and capriciously, as well as vindictively, towards Petitioner in issuing the Notices of Deficiency and the jeopardy assessments.
 - g. 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.).
 - h. Respondent lacks any credible basis to support the adjustments in dispute.

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

Respectfully submitted,

Dated: July 29, 2013

By: Mark E. Cedrone **ADMITTED NOT RECOGNIZED**
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No Signature on Petition

General Information

Court	United States District Court for the Eastern District of Pennsylvania
Date Filed	2013-06-13 00:00:00