

3. The deficiencies and additions to tax/penalties as determined by Respondent are for individual income taxes for the calendar years 2001 – 2005 in the following amounts and are in dispute in their entirety:²

<u>Fiscal Year Ended</u>	<u>Deficiency</u>	<u>Fraud Addition to Tax/Penalty (I.R.C. §6663)</u>
December 31, 2001	\$217,225.00	\$162,918.75
December 31, 2002	\$208,295.00	\$156,221.25
December 31, 2003	\$164,705.85	\$123,529.37
December 31, 2004	\$88,006.00	\$66,004.50
December 31, 2005	\$67,905.00	\$50,928.75

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

a. Tax Year Ended December 31, 2001

- i. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits from the Pennsylvania State Senate ("PSS") in the amount of \$381,807.38.
- ii. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits received from Citizens

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.).

Alliance for Better Neighborhoods (“CABN”) in the amount of \$157,575.59.

- iii. Respondent erroneously disallowed Petitioner’s itemized deductions in the amount of \$16,182.00.
- iv. Respondent erroneously assessed the addition to tax/penalty for fraud under I.R.C. § 6663, 26 U.S.C. § 6663 in the amount of \$162,918.75.

b. Tax Year Ended December 31, 2002

- i. Respondent erroneously increased Petitioner’s taxable income based on the alleged receipt of benefits from the Pennsylvania State Senate (“PSS”) in the amount of \$403,249.28.
- ii. Respondent erroneously increased Petitioner’s taxable income based on the alleged receipt of benefits received from Citizens Alliance for Better Neighborhoods (“CABN”) in the amount of \$120,658.24.
- iii. Respondent erroneously disallowed Petitioner’s itemized deductions in the amount of \$15,717.00.
- iv. Respondent erroneously assessed the addition to tax/penalty for fraud under I.R.C. § 6663, 26 U.S.C. § 6663 in the amount of \$156,221.25.

c. Tax Year Ended December 31, 2003

- i. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits from the Pennsylvania State Senate ("PSS") in the amount of \$401,531.40.
- ii. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits received from Citizens Alliance for Better Neighborhoods ("CABN") in the amount of \$138,639.07.
- iii. Respondent erroneously disallowed Petitioner's itemized deductions in the amount of \$16,204.96.
- iv. Respondent erroneously assessed the addition to tax/penalty for fraud under I.R.C. § 6663, 26 U.S.C. § 6663 in the amount of \$123,529.37.

d. Tax Year Ended December 31, 2004

- i. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits from the Pennsylvania State Senate ("PSS") in the amount of \$292,315.66.
- ii. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits received from Citizens Alliance for Better Neighborhoods ("CABN") in the amount of \$21,992.62.
- iii. Respondent erroneously disallowed Petitioner's itemized deductions in the amount of \$15,715.00.

iv. Respondent erroneously assessed the addition to tax/penalty for fraud under I.R.C. § 6663, 26 U.S.C. § 6663 in the amount of \$66,004.50.

e. Tax Year Ended December 31, 2005

i. Respondent erroneously increased Petitioner's taxable income based on the alleged receipt of benefits from the Pennsylvania State Senate ("PSS") in the amount of \$216,186.66.

ii. Respondent erroneously disallowed Petitioner's itemized deductions in the amount of \$6,486.00.

iii. Respondent erroneously assessed the addition to tax/penalty for fraud under I.R.C. § 6663, 26 U.S.C. § 6663 in the amount of \$50,928.75.

f. With respect to all adjustments detailed in the Notice of Deficiency, Respondent acted in an arbitrary and capricious manner, and for the purpose to harass, intimidate, and retaliate against Petitioner for exercising his Sixth Amendment constitutional rights 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.).

5. The facts upon which Petitioner relies are as follows:

a. Tax Year Ended December 31, 2001

i. Petitioner did not receive income in the form of benefits from PSS in the amount of \$381,807.38.

- ii. Petitioner did not receive income in the form of benefits from CABN in the amount of \$157,575.59.
- iii. Petitioner did not overstate his itemized deductions in the amount of \$16,182.00.
- iv. Petitioner did not willfully file a materially false income tax return for 2001 and, hence, is not responsible for any addition to tax for fraud.

b. Tax Year Ended December 31, 2002

- i. Petitioner did not receive income in the form of benefits from PSS in the amount of \$403,249.28.
- ii. Petitioner did not receive income in the form of benefits from CABN in the amount of \$120,658.24.
- iii. Petitioner did not overstate his itemized deductions in the amount of \$15,717.00.
- iv. Petitioner did not willfully file a materially false income tax return for 2002 and, hence, is not responsible for any addition to tax for fraud.

c. Tax Year Ended December 31, 2003

- i. Petitioner did not receive income in the form of benefits from PSS in the amount of \$401,531.40.
- ii. Petitioner did not receive income in the form of benefits from CABN in the amount of \$138,639.07.

iii. Petitioner did not overstate his itemized deductions in the amount of \$16,204.96.

iv. Petitioner did not willfully file a materially false income tax return for 2003 and, hence, is not responsible for any addition to tax for fraud.

d. Tax Year Ended December 31, 2004

i. Petitioner did not receive income in the form of benefits from PSS in the amount of \$292,315.66.

ii. Petitioner did not receive income in the form of benefits from CABN in the amount of \$21,992.62.

iii. Petitioner did not overstate his itemized deductions in the amount of \$15,715.00.

iv. Petitioner did not willfully file a materially false income tax return for 2004 and, hence, is not responsible for any addition to tax for fraud.

e. Tax Year Ended December 31, 2005

i. Petitioner did not receive income in the form of benefits from PSS in the amount of \$216,186.66.

ii. Petitioner did not overstate his itemized deductions in the amount of \$6,486.00.

iii. Petitioner did not willfully file a materially false income tax return for 2005 and, hence, is not responsible for any addition to tax for fraud.

- f. Petitioner did not engage in fraud associated with any of his tax returns for the years 2001 – 2005 and Respondent cannot establish by clear and convincing evidence, as required, that Petitioner engaged in such fraud.
- g. Respondent is collaterally estopped from making any proposed adjustments to Petitioner's 2001 – 2005 federal income tax returns. Specifically, the issue of whether Petitioner received any benefits from PSS or CABN was authoritatively determined by the United States District Court for the Eastern District of Pennsylvania in Petitioner's favor 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 issue of concern here was fully and fairly litigated, collateral estoppel bars Respondent from asserting the proposed adjustments to Petitioner's taxable income for 2001 – 2005.
- h. Respondent's proposed adjustments and the jeopardy assessments already issued (*see supra* note 2) are barred by the applicable statute of limitations.
- i. Respondent has acted arbitrarily and capriciously, as well as vindictively, towards Petitioner in issuing Notices of Deficiency and the jeopardy assessments.
- j. 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 No. 06-319-03 (U.S.D.C. E.D.Pa.).

- k. Respondent lacks any credible basis to support the adjustments in dispute and the required conclusion that Petitioner's tax returns were the result of fraud.

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

Respectfully submitted,

Dated: July 29, 2013

By:

Mark E. Cedrone

ADMITTED

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General Information

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