

No. 11-9019

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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JEFFREY THOMAS MAEHR,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent-Appellee

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ORAL ARGUMENT NOT REQUESTED

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ON APPEAL FROM THE ORDER AND DECISION  
OF THE UNITED STATES TAX COURT  
(SPECIAL TRIAL JUDGE LEWIS R. CARLUZZO)

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THIS BRIEF HAS ATTACHMENTS  
(ATTACHMENTS ARE INCLUDED IN NATIVE PDF FORMAT)

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BRIEF FOR THE APPELLEE

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## GLOSSARY

<b>Abbreviation</b>	<b>Definition</b>
Br.	Appellant's brief
Code	Internal Revenue Code (26 U.S.C.) of 1986
Doc.	Document in Tax Court record
Fed. R. App. P.	Federal Rule of Appellate Procedure
Fed. R. Civ. P.	Federal Rule of Civil Procedure
I.R.C.	Internal Revenue Code (26 U.S.C.) of 1986
IRS	Internal Revenue Service
Tax Ct. R.	Tax Court Rule of Practice and Procedure
Treas. Reg.	Treasury Regulation (26 C.F.R.)
U.S.C.	United States Code

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**STATEMENT OF RELATED CASES**

Pursuant to Rule 28.2(C)(1), counsel for the appellee state that they are not aware of any prior or related appeals.

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**No. 11-9019**

**JEFFREY THOMAS MAEHR,**

**Petitioner-Appellant**

**v.**

**COMMISSIONER OF INTERNAL REVENUE,**

**Respondent-Appellee**

---

**ON APPEAL FROM THE ORDER AND DECISION  
OF THE UNITED STATES TAX COURT**

---

**BRIEF FOR THE APPELLEE**

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**STATEMENT OF SUBJECT MATTER  
AND APPELLATE JURISDICTION**

On February 11, 2011, the Commissioner of Internal Revenue issued notices of deficiency under Section 6212(a) of the Internal Revenue Code (26 U.S.C.) (I.R.C. or the Code)<sup>1</sup> to Jeffrey T. Maehr (taxpayer) for taxable years 2003, 2004, 2005, and 2006. (Doc. 3, Ex. 1-

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Code, as amended and in effect with respect to the time in question.

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R.)<sup>2</sup> On May 9, 2011, taxpayer timely petitioned the Tax Court. (Doc. 1.) I.R.C. § 6213(a). The Tax Court had jurisdiction under I.R.C. §§ 6213(a) and 7442.

On August 19, 2011, the Tax Court (Special Trial Judge Lewis R. Carluzzo) entered an order of dismissal and decision granting the Commissioner's motion to dismiss the case for failure to state a claim upon which relief could be granted, and determining that taxpayer was liable for the deficiencies and penalties asserted in the notices of deficiency. (Doc. 13.) **This order and decision finally disposed of all the claims of all the parties.**

Taxpayer, on September 13, 2011, timely moved to vacate the decision. (Doc. 14.) *See* Tax Ct. R. 162. The time for taking an appeal from the Tax Court's decision started to run on September 16, 2011, when the Tax Court denied the motion. *See* Fed. R. App. P. 13(a)(2). Taxpayer's notice of appeal was timely filed on December 8, 2011. (Doc.

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<sup>2</sup> "Doc." references are to the documents in the record as numbered by the Clerk of the Tax Court.

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20.) *See* I.R.C. §§ 7483, and Fed. R. App. P. 13(a)(1). This Court has jurisdiction under I.R.C. § 7482(a)(1).

### STATEMENT OF THE ISSUE

Whether the Tax Court correctly dismissed taxpayer's petition for failure to state a claim, where taxpayer advanced only frivolous arguments, such as the argument that his wages were not taxable income, that he was not a "taxpayer," and that the IRS had no authority to determine taxes against him.

### STATEMENT OF THE CASE

Taxpayer challenged the notices of deficiency in Tax Court. (Doc. 1.) The Commissioner moved to dismiss for failure to state a claim. (Doc. 3.) The Tax Court ordered taxpayer to file an amended petition and a response to the Commissioner's motion. (Doc. 4.) Taxpayer filed a response to the motion (Doc. 9), but, despite two extensions of time to do so (Docs. 6, 10), did not file an amended petition. The Tax Court dismissed the case. (Doc. 13.) Taxpayer filed a timely motion to vacate, which the court denied. (Doc. 14.) Taxpayer filed a second

motion to vacate, which the court also denied. (Doc. 19.) Taxpayer appealed. (Doc. 20.)<sup>3</sup>

**STATEMENT OF THE FACTS**

**1. The notices of deficiency**

The Commissioner issued two notices of deficiency under I.R.C. § 6212, to taxpayer for tax years 2003, 2004, 2005, and 2006, asserting income tax deficiencies and penalties for failure to file (I.R.C. § 6651(a)(1)), for failure to pay estimated tax (I.R.C. § 6654(a)), and for failure to pay the tax (I.R.C. § 6651(a)(2)) in the following amounts:

<u>Year</u>	<u>tax</u>	<u>Additions to tax under I.R.C.</u>		
		<u>§ 6651(a)(1)</u>	<u>§ 6651(a)(2)</u>	<u>§ 6654(a)</u>
2003	\$35,474	\$7,981.65	*	\$915.28
2004	\$38,928	\$8,758.80	*	\$1,115.56
2005	\$34,538	\$7,771.05	*	\$1,385.37
2006	\$28,181	\$6,340.75	*	\$1,333.65

\*0.5 percent of the deficiency for each month, or fraction thereof, of nonpayment, up to 25 percent. (Doc. 3, Ex. 1-R)

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<sup>3</sup> Taxpayer’s suggestion (Br. 9) that he was disadvantaged because he was not properly notified of the decision or of the Tax Court’s denial of his motion to vacate is belied by the fact that he timely filed both the motion to vacate the decision (Doc. 14) and the notice of appeal (Doc. 20). The Tax Court rules do not provide for any further filings.

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## **2. Taxpayer's petition**

In his petition, taxpayer argued, among other things, that the IRS lacked “standing” and “jurisdiction” (Doc. 1, attachment at 4-5), that the Internal Revenue Code is “NOT positive law” and applies only to employees of the federal government (*id.* at 5), that the IRS is not a government agency and is not authorized to act in the state of Colorado because its “jurisdiction” is limited to the District of Columbia (*id.* at 5-6), and that he is not a “taxpayer” (*id.* at 6). He also contended that the IRS had failed to provide “the legally required ‘Summary Record of Assessment’” (*id.* at 7), and that he is not required to file a return because the forms violate the PRA (Paperwork Reduction Act) and because there is no statutory provision requiring him to do so (*id.*). He alleged that the notice of deficiency was invalid because it was not properly signed (*id.*), that he did not have “income” as defined by the courts because wages are not income (*id.* at 7-8), and the 16th Amendment does not authorize imposing an income tax on him (*id.* at 10). The petition contained as attachments, a document titled “IR Code

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(IRC) is not positive law” (*id.*, Ex. V), a document titled “IRS Not Created Legally” (*id.*, Ex. L); a document titled “Unauthorized use of 1040 forms by IRS” (*id.*, Ex. M); and a document titled “16th Amendment Clarification!” (*id.*, Ex. C).

### **3. The Commissioner’s motion to dismiss**

The Commissioner moved to dismiss for failure to state a claim, arguing that the petition did not comply with Tax Court Rule 34, because it lacked “specific justiciable allegations of error and of supporting facts” and **made only frivolous arguments that had been repeatedly rejected by the courts.** (Doc. 3.) The court ordered taxpayer to file an amended petition and a response to the Commissioner’s motion. (Doc. 4.)

Taxpayer filed an objection in which he conceded that he had not provided assignments of error in the deficiency, but contended that “[s]pecific assignments of error are an impossibility since the entire assessment is in error” because “[i]ncome’ as defined by the courts for 100 years . . . is NOT ‘wages, salary, or compensation.’” (Doc. 9 at 2-3). **Taxpayer repeated his frivolous arguments (*id.* at 4-8),** and contended

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that the Commissioner was “interfering with [his] religious rights and practice” (*id.* at 10). Attachments to the response included a document titled “Involuntary Servitude & Peonage,” arguing that the income tax constitutes involuntary servitude (*id.*, Ex. J at 2), and one titled “IRS/US Government Territorial Jurisdiction,” arguing that the Commissioner “has No jurisdiction in the state of Colorado” (*id.*, Ex. X at 1).

#### 4. The order of dismissal and decision

The Tax Court dismissed the case for failure to comply with Rule 34, finding that the petition did not raise any justiciable issue with respect to the deficiencies, that taxpayer’s “98 page response to [the Commissioner’s] motion does nothing to cure the defective petition,” and that taxpayer had been given an opportunity to file an amended petition, but did not do so. (Doc. 13 at 1-2.) The court, accordingly, determined that taxpayer was liable for the deficiencies and penalties asserted in the notices of deficiency. (*Id.* at 2-3.) See I.R.C. § 7459(d).

Taxpayer moved to vacate, repeating the same frivolous arguments. (Doc. 14.) He contended that the Tax Court, by rejecting

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his arguments was “immediately depriving [him] of Due Process.” (Doc. 14 at 5.) Attached to the motion was a document titled “The Real Truth about the IRS’s ‘Truth’ about ‘Frivolous’ Tax Arguments.” (*Id.*, attachment.) Taxpayer also submitted to the court an “affidavit,” in which he **reasserted the frivolous arguments in the petition.** (Doc. 15; *see also* Docs. 16, 17, 18.) **The court denied the motion without written opinion.**<sup>4</sup>

**Taxpayer then filed a second (and late, *see* Tax Ct. R. 162) motion to vacate in which he discussed the Federal Reserve Act. (Doc. 19.) The court denied this second motion without a written opinion.**

Taxpayer appealed. (Doc. 20.)<sup>5</sup>

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<sup>4</sup> Contrary to taxpayer’s suggestions (Br. 8-9, 25), the Tax Court Rules do not require a response to a motion to vacate, or a separate written order when the court denies such a motion. *See* Tax Ct. R. 50(b)(3) (court may dispose of a motion by “such action as the Court in its discretion deems appropriate”).

<sup>5</sup> Taxpayer contends (Br. 10) that he had “moved for recusal of Judge Colvin,” but neither the alleged motion nor the “Affidavit of Prejudice” he claims to have filed in support of that motion are listed on the docket sheet. **Moreover, Special Trial Judge Carluzzo issued the order and decision here, not Chief Judge Colvin, and taxpayer does not dispute any of the procedural orders on which Judge Colvin’s name**

(continued...)

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## SUMMARY OF ARGUMENT

Under Tax Court Rule 34(b), a taxpayer's petition must contain clear and concise assignments of error in the Commissioner's deficiency determinations and clear and concise factual allegations in support thereof. Courts have repeatedly recognized that a petition that presents legal conclusions devoid of clear and concise assignments of error and supporting factual allegations is subject to dismissal for failure to state a claim upon which relief could be granted.

The Tax Court correctly dismissed this case for failure to state a claim upon which relief could be granted. Taxpayer's petition and other pleadings contained only frivolous legal contentions to the effect that he was not subject to federal income tax based on a cornucopia of tax-defier legal theories, including arguments that wages are not income, that the Code does not apply to residents of the states, and that the 16th Amendment does not authorize an income tax on individuals. These arguments have been repeatedly rejected as frivolous by this

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<sup>5</sup> (...continued)  
appeared.

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Court and by other courts. Taxpayer was given an opportunity to correct these defects by filing an amended petition, but did not do so.

Accordingly, the petition did not comply with Rule 34(b) and the Tax Court properly dismissed it.

The order of dismissal and decision of the Tax Court should be affirmed.

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## ARGUMENT

**The Tax Court properly dismissed the petition in this deficiency suit for failure to state a claim upon which relief could be granted where taxpayer asserted only nonsensical claims and did not assert any error in the notices of deficiency**

### Standard of review

This Court reviews *de novo* the Tax Court's dismissal for **failure to state a claim**. *Fox v. Commissioner*, 969 F.2d 951, 952 (10th Cir. 1992).

The issue was raised in the Commissioner's motion to dismiss (Doc. 3), and ruled upon in the Tax Court's order of dismissal and decision (Doc. 13).

#### A. Introduction

Section 6212(a) of the Internal Revenue Code authorizes the IRS to issue a notice of deficiency to a **taxpayer**. Once a notice of deficiency is issued, **the taxpayer** to whom it is addressed has 90 days within which to file a petition in the Tax Court seeking judicial redetermination of the asserted deficiency. I.R.C. § 6213(a).<sup>6</sup> The

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<sup>6</sup> I.R.C. § 6213(a) prohibits assessment of a deficiency until a  
(continued...)

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notice of deficiency has been described as the taxpayer's "ticket to the Tax Court." See *Laing v. United States*, 423 U.S. 161, 206 (1976) (Blackmun, J., dissenting); *Guthrie v. Sawyer*, 970 F.2d 733, 735 (10th Cir. 1992). It is well-established that "in deficiency actions the Commissioner's determination is presumed correct, and the [taxpayer] bears the burden to prove otherwise." *Scherping v. Commissioner*, 747 F.2d 478, 480 (8th Cir. 1984). See I.R.C. § 7491(a) (burden shifts to Commissioner once taxpayer introduces "credible evidence" relevant to his tax liability.)

Pursuant to the authority granted by I.R.C. § 7453, the Tax Court has promulgated rules of practice and procedure governing the conduct of proceedings in that court. Tax Court Rule 34(b)(4) provides that a Tax Court petition in a deficiency case shall contain "[c]lear and concise

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<sup>6</sup> (...continued)

notice of deficiency has been issued and, where, as here, the taxpayer contests the notice of deficiency in Tax Court, until the Tax Court decision is final. A Tax Court decision is not final until all judicial avenues of review have been exhausted. See I.R.C. § 7481. Accordingly, taxpayer's complaints (e.g., Br. 2-3) that the Commissioner did not prove there was a valid assessment are premature and misplaced.

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assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability,” including issues on which the Commissioner will bear the burden of proof. “Any issue not raised in the assignments of error shall be deemed to be conceded.” Tax Ct. R. 34(b)(4). *See Bob Wondries Motors, Inc. v. Commissioner*, 268 F.3d 1156, 1161 (9th Cir. 2001) (taxpayers barred by Rule 34(b)(4) from pursuing argument not raised in petition). Rule 34(b)(5) further requires “[c]lear and concise lettered statements of the facts on which petitioner bases the assignments of error.” *See also Fox*, 969 F.2d at 952-953; *Scherping*, 747 F.2d at 480.

The Tax Court’s rules have been interpreted to require more detailed pleadings than are necessary under the Federal Rules of Civil Procedure. *See Scherping*, 747 F.2d at 480; *Taylor v. Commissioner*, 771 F.2d 478, 479 (11th Cir. 1985).<sup>7</sup> Consequently, a taxpayer may not

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<sup>7</sup> Accordingly, taxpayer’s discussion (Br. 21-22) of the standards for dismissal for failure to meet the pleading standards of Fed. R. Civ. P. 8 is beside the point. In any event, the petition here would fare no better under the Federal Rules of Civil Procedure. *See Ashcroft v.*

(continued...)

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rest solely on conclusory allegations of error, but must affirmatively set forth in his petition specific facts indicating that specific errors have occurred. *Scherping*, 747 F.2d at 480. Taxpayer's *pro se* status does not excuse him from "comply[ing] with the more detailed pleading requirements of Rule 34(b)(5)." *Lefebvre v. Commissioner*, 830 F.2d 417, 419 (1st Cir. 1987). See also, *Taylor*, 771 F.2d at 480; *Scherping*, 747 F.2d at 480.

Where, as here, the taxpayer fails to satisfy the Tax Court's pleading requirements, the petition is subject to dismissal for failure to state a claim upon which relief could be granted. See *Fox*, 969 F.2d at 952-953 (dismissal proper where taxpayer's petitions "were blatantly frivolous and groundless" and thus did not comply with Rule 34(b)(4) and (5)); *Boggs v. Commissioner*, 569 F.3d 235, 237 (6th Cir. 2009) (dismissal proper where deficiency petition "did not comply with the

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<sup>7</sup> (...continued)

*Iqbal*, 129 S. Ct. 1937, 1949 (2009) (In order to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim, the complaint must allege "sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." (internal quotes omitted)).

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requirements of Rule 34”); *Stearman v. Commissioner*, 436 F.3d 533, 537, 538 n.11 (5th Cir. 2006) (dismissal proper where taxpayers made only frivolous arguments); *Taylor*, 771 F.2d at 479 (same where deficiency petition lacked supporting factual assertions).

**B. Taxpayer’s petition fails to state a claim**

Taxpayer’s petition did not comply with Rule 34. As an initial matter, it failed to comply with Rule 34(b)(5) because it contained no (or no relevant) assertions of fact, but consisted solely of legal theory (or legalistic gibberish) and conclusions of law based on unstated facts. In particular, taxpayer did not dispute that he had received the income amounts asserted in the notices of deficiency, and did not allege that he was entitled to any deductions beyond those allowed in the notice. Nor did he allege that he had filed returns, paid sufficient estimated tax, or paid his income tax liability. Instead he contended that the IRS lacked “jurisdiction” or “standing” to issue a notice of deficiency to him (Doc. 1 at 4-6), that he is not a “taxpayer” (*id.* at 6), and that he had no “income” because the definition of income does not include wages (*id.* at 7-8).

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The Tax Court gave **taxpayer** ample opportunity to correct the deficiencies in his petition, notwithstanding **taxpayer's** apparent contentions to the contrary. (Br. 9, 12.) After the Commissioner moved to dismiss the petition for failure to state a claim (Doc. 3), the Tax Court directed **taxpayer** to file a “proper amended petition that contains clear and concise assignments of each and every error that [he] alleges to have been committed by the Commissioner” in the notice of deficiency (Doc. 4), and gave him two extensions of time to do so (Docs. 6, 10). In other words, the Tax Court afforded **taxpayer** the opportunity to comply with Rule 34(b). **Taxpayer did not avail himself of that opportunity.**

**C. Taxpayer's arguments are frivolous**

There is **no merit to taxpayer's contentions that income from his labor is not taxable and that he is not required to file a federal income tax return.** Section 1 of the Code **imposes a tax on the taxable income of all individuals who, like taxpayer here, are citizens or residents of the United States.** See Treas. Reg. § 1.1-1(a)(1); *Wheeler v. Commissioner*, 528 F.3d 773, 776-77 (10th Cir. 2008) (“The very first

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section of the Internal Revenue Code, 26 U.S.C. § 1, imposes an income tax on the taxable income of every citizen or resident of the United States.”). Section 63 of the Code defines “taxable income” as gross income less allowable deductions. Section 61(a) of the Code, in turn, defines “gross income” as “all income from whatever source derived,” and specifically includes compensation for services, I.R.C. § 61(a)(1), and business income, I.R.C. § 61(a)(2).

The Supreme Court has recognized that “Congress intended through § 61(a) . . . to exert ‘the full measure of its taxing power,’ and to bring within the definition of income any ‘accessio[n] to wealth.’” *United States v. Burke*, 504 U.S. 229, 233 (1992) (quoting *Helvering v. Clifford*, 309 U.S. 331, 334 (1940), and *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955)). Further, I.R.C. § 6012(a)(1)(A) generally provides that every individual with income “which equals or exceeds the exemption amount” is required to file an individual income tax return. Because taxpayer apparently concedes (Br. 15) that he received “wages, salary or compensation” and has never alleged that the amounts he received fell below the exemption amount, it follows

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that he was subject to tax under § 1 and was required by § 6012(a) to file a return.

Taxpayer presents a cornucopia of tax-defier arguments to support his contention that he is not subject to the Code. Included in his frivolous arguments are arguments that individuals are not subject to tax under the Code, that the authority of the United States is confined to the District of Columbia, that the Sixteenth Amendment does not authorize a tax on individuals, that wages are not income, that no statutory authority exists for imposing an income tax on individuals, that individuals are not required to file income tax returns, and that the Commissioner and IRS employees lack authority to administer the Internal Revenue laws. (Br. 3, 5, 7, 12, 14-18, 20, 26.) This Court described these arguments as “completely lacking in legal merit and patently frivolous” more than 20 years ago, in *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990). *Accord Ford v. Pryor*, 552 F.3d 1174, 1177 n.2 (10th Cir. 2008) (listing arguments that “have long been held to be lacking in legal merit and frivolous”); *Wheeler v. Commissioner*, 528 F.3d 773, 776-77 (10th Cir. 2008) (rejecting, as

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frivolous, taxpayer's claims that there is no statutory authority for the income tax, that the filing requirement violates his Fifth Amendment right against self-incrimination, and that he was not liable for penalties because the Forms 1040 did not contain a valid OMB number); *Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004) (describing as "long rejected" by the courts defendant's argument that he was not subject to the Code because he was not a "fourteenth amendment citizen"); *Fox*, 969 F.2d at 952, 953 (describing petitions that argued that the petitioner was not a "taxpayer" as "blatantly frivolous and groundless"); *Snead v. Commissioner*, 733 F.2d 719, 720 (10th Cir. 1984) (rejecting frivolous challenge to Tax Court jurisdiction and authority).

Other courts have also rejected such frivolous arguments. *See United States v. Cooper*, 170 F.3d 691, 691 (7th Cir. 1999) (argument "that only residents of Washington, D.C., and other federal enclaves are subject to the federal tax laws" has been rejected in "countless cases" and is "no longer merely frivolous" but "frivolous squared"); *Cook v. Spillman*, 806 F.2d 948, 949 (9th Cir. 1986) (argument that Federal

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**Reserve Notes do not constitute taxable income “is wholly frivolous”);**

*Ryan v. Bilby*, 764 F.2d 1325, 1328 (9th Cir. 1985) (rejecting argument that the Internal Revenue Code is invalid because not enacted into positive law.); *Crain v. Commissioner*, 737 F.2d 1417, 1417-18 (5th Cir. 1984) (“The constitutionality of our income tax system – including the role played within that system by the Internal Revenue Service and the Tax Court – has long been established.”); *Ginter v. Southern*, 611 F.2d 1226, 1229 n.2 (8th Cir. 1979) (argument that federal income tax constitutes “involuntary servitude in violation of the Thirteenth Amendment” is “so frivolous that we do not discuss [it] in any detail”).

**As the Fifth Circuit stated, “We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.”**

*Crain*, 737 F.2d at 1417.

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## CONCLUSION

For the reasons stated above, the order of dismissal and decision of the Tax Court is correct and should be affirmed.

## STATEMENT REGARDING ORAL ARGUMENT

Counsel for the appellee believe that oral argument is not necessary for the Court's consideration of this case, because taxpayer's arguments are frivolous.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

### Section 1. Word count

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced and contains 3,643 words.

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s/ Sara Ann Ketchum  
SARA ANN KETCHUM  
*Attorney*

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### CERTIFICATE OF SERVICE

It is hereby certified that, on this 13th day of April, 2012, this brief was filed with the Clerk of the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system and seven paper copies were sent to the Clerk by FedEx for next business day delivery. Notice of such filing will be sent to the appellant, appearing *pro se*, via the CM/ECF system.

It is further certified that: (1) all required privacy redactions have been made; (2) the ECF submission is an exact copy of the paper copies sent to the Clerk; and (3) the ECF submission was scanned for viruses with the Trend Micro OfficeScan 8.0 antivirus program (updated daily), and, according to the program, is free of viruses.

/s/ Sara Ann Ketchum  
SARA ANN KETCHUM  
Attorney

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## **APPENDIX**

The appellant failed to attach to his opening brief a copy of the Tax Court's decision, as required by Rule 28.2(A). Pursuant to Rule 28.2(B), a copy of the order and decision is attached as an appendix to this brief:

### **Doc.**

13 Order of Dismissal and Decision