

# United States Tax Court

T.C. Memo. 2022-39

DAVID ISAAC BINDEL,  
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent

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Docket No. 9552-19.

Filed April 20, 2022.

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David Isaac Bindel, pro se.

*Billi Seale, Vivian Bodey, and Linda L. Wong*, for respondent.

## MEMORANDUM FINDINGS OF FACT AND OPINION

URDA, *Judge*: Petitioner, David Isaac Bindel, challenges the determination by the Internal Revenue Service (IRS) of federal income tax deficiencies of \$23,740 and \$24,749 for his 2015 and 2016 tax years, respectively.<sup>1</sup> Mr. Bindel reported no taxable income on his tax returns for those years and raises in this Court frivolous arguments in support of that tax reporting. We will sustain the IRS's deficiency determinations.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all monetary amounts to the nearest dollar (except *infra* note 3).

<sup>2</sup> The Commissioner previously conceded an accuracy-related penalty under section 6662(a) for tax years 2015 and 2016, as well as an additional tax under section 72(t) on a 2015 distribution from Mr. Bindel's individual retirement account.

[\*2]

## FINDINGS OF FACT

This case was tried on May 5, 2021, at the Court's remote trial session for cases associated with Dallas, Texas. We draw the following facts from the parties' stipulations and supporting exhibits, as well as the testimony presented at trial. Mr. Bindel lived in Texas when he timely filed his petition.

I. *Mr. Bindel's 2015 and 2016 Earnings and Tax Reporting*

During 2015 and 2016 Mr. Bindel worked as a software developer for Skylzone LLC (Skylzone) and Alkami Technology, Inc. (Alkami). Specifically, he worked at Skylzone from April 2014 to February 2015 and at Alkami for the remainder of 2015 and all of 2016. Mr. Bindel earned \$17,911 from Skylzone and \$99,698 from Alkami in 2015. The next year, he received \$20 from Skylzone and \$123,471 from Alkami.<sup>3</sup>

On his 2015 Form 1040, U.S. Individual Income Tax Return, Mr. Bindel claimed a refund of \$31,807, reporting that he earned no wages. He attached to his tax return Form 4852, on which he represented that he "did not receive any wages as defined in section 3401(a) and section 3121(a)" from Skylzone or Alkami and sought a refund equal to the amounts of tax withheld by those employers.

Mr. Bindel's tax reporting for 2016 was similar to that of the previous year. Specifically, he claimed a refund of \$33,849 and reported no wages. He again attached Form 4852 to his tax return and reprised his earlier contentions that he did not receive wages as defined in the Internal Revenue Code and that he was entitled to a refund of tax withheld by Skylzone and Alkami.

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<sup>3</sup> Although Mr. Bindel testified at trial that Skylzone did not pay him \$20 in 2016, we find this testimony not credible. The record before us contains a 2016 Form W-2, Wage and Tax Statement, from Skylzone that reflects a \$20 payment and Social Security and Medicare tax withholdings totaling \$1.53. Mr. Bindel reported no wages (or other income aside from \$118 in interest income) on his 2016 income tax return, consistent with his position that his earnings are not taxable under the Internal Revenue Code. On Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., which he attached to his 2016 return, Mr. Bindel reported \$1.53 in Social Security and Medicare tax withholdings by Skylzone. Mr. Bindel's affirmative decision to report the exact amount of withholdings associated with a \$20 payment (as part of his broader effort to seek a refund) belies his testimony and supports the existence of the \$20 payment reflected on the 2016 Skylzone Form W-2.

[\*3] II. *IRS Examination and Notice of Deficiency*

For both 2015 and 2016 Skyllzone and Alkami issued to Mr. Bindel Forms W-2 and reported amounts paid to him on information returns filed with the IRS. The discrepancy between the tax reporting of Mr. Bindel and that of Skyllzone and Alkami led to an IRS examination of Mr. Bindel's 2015 and 2016 tax returns. The examination culminated in the issuance of a notice of deficiency that determined that Mr. Bindel had failed to report income received from Skyllzone and Alkami for 2015 and 2016.

OPINION

I. *Unreported Income*

Generally, the Commissioner's determinations in a notice of deficiency are presumed correct, and a taxpayer bears the burden of proving them erroneous. *See* Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Carson v. United States*, 560 F.2d 693, 695–96 (5th Cir. 1977). In cases involving failure to report income, the Court of Appeals for the Fifth Circuit, to which an appeal in this case would ordinarily lie, *see* § 7482(b)(1), has held that the Commissioner first must establish some factual foundation linking the taxpayer to the income-producing activity for the presumption to attach, *see, e.g., Parker v. Commissioner*, 117 F.3d 785, 787 (5th Cir. 1997); *Portillo v. Commissioner*, 932 F.2d 1128, 1133 (5th Cir. 1991), *aff'g in part, rev'g in part, and remanding* T.C. Memo. 1990-68. Once the Commissioner has done so, the taxpayer bears the burden of proof to show by a preponderance of the evidence that the Commissioner's determination is arbitrary or erroneous. *See Portillo v. Commissioner*, 932 F.2d at 1133; *Carson*, 560 F.2d at 695–96.

We have found that Mr. Bindel was paid \$117,609 in 2015 and \$123,491 in 2016 while working for Skyllzone and Alkami, consistent with the notice of deficiency. The parties stipulated these amounts except for a \$20 payment from Skyllzone in 2016. And as we described *supra* note 3, the Commissioner sufficiently linked this \$20 to Mr. Bindel by means of a Form W-2 from Skyllzone for this amount and Mr. Bindel's own Form 4852, which detailed the tax withheld from Skyllzone's 2016 payments to him.

Mr. Bindel accordingly bears the burden to prove by a preponderance of the evidence that the Commissioner erred in his determinations. Mr. Bindel attempts to do so by invoking a raft of

[\*4] meritless arguments directed to the nature of the income tax and its purported limited applicability to most types of earnings (including those of software developers like Mr. Bindel).<sup>4</sup> To know these arguments is to reject them. *See, e.g., Parker v. Commissioner*, 724 F.2d 469, 471–72 (5th Cir. 1984) (refuting allegation that “the income tax is an excise tax applicable only against special privileges” and finding Congress empowered to levy income tax against any source of income), *aff’g* T.C. Memo. 1983-75; *Briggs v. Commissioner*, T.C. Memo. 2016-86, at \*10 (“[The taxpayers’] assertions that wages from private-sector employers are not ‘income’ for Federal income tax purposes are frivolous.”); *see also Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) (“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.”); *Wnuck v. Commissioner*, 136 T.C. 498, 510–12 (2011).

We thus will sustain the IRS’s deficiency determinations, subject to the Commissioner’s concessions.

## II. *Section 6673 Penalty*

Pursuant to section 6673(a)(1), we have the authority to impose a penalty of up to \$25,000 on a taxpayer who, inter alia, institutes or maintains before this Court a proceeding primarily for delay or pursues a position that is frivolous or groundless. We have not found that Mr. Bindel has made these or similar frivolous claims in previous cases. We thus will choose not to impose this penalty at this time. We caution Mr. Bindel, however, that he risks penalties under section 6673 if he presses these or similar arguments in the future.

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<sup>4</sup> In addition to the mine-run of tax-defier arguments described above, Mr. Bindel contends (taking a slightly different tack) that the notice of deficiency was invalid on the ground that the individual who signed it lacked authority to do so. We previously denied Mr. Bindel’s motion to dismiss for lack of jurisdiction on this ground and pause to make clear the faulty premises underlying this argument. As the Fifth Circuit has explained, “a notice of deficiency is valid as long as it informs a taxpayer that the IRS has determined that a deficiency exists and specifies the amount of the deficiency” and that “[t]he existence of a signature or the identity of any IRS official who provides one, is superfluous.” *Selgas v. Commissioner*, 475 F.3d 697, 700 (5th Cir. 2007); *see also Harriss v. Commissioner*, T.C. Memo. 2021-31, at \*14–16.

**[\*5]** III. *Conclusion*

The IRS's deficiency determinations are sustained, subject to the Commissioner's concessions.

To reflect the foregoing,

*Decision will be entered under Rule 155.*