Prayer For Relief Sought By Petitioner

Joseph Alan Fennell, Petitioner

Comes now the Petitioner before this Honorable Court and prays that the Court compel Respondent to perform either of the two alternatives set forth below. Petitioner believes that the providing of such relief will serve the interest of justice and promote respect for the rule of law. Petitioner believes he is entitled to such relief as a matter of fundamental and/or statutory law.

1. Perform all of Respondent's duties and obligations under the law, including Respondent's duty and obligation to:

a. Provide due process of law by responding meaningfully to, or by acknowledging as true, those assertions based on fact and/or law that Petitioner set forth in his Constructive Notices of September 27, 2007 and October 22, 2007.

b. Fulfill Respondent's obligation under 26 USC 6330(c)(2)(B) to provide Petitioner with an opportunity to challenge the existence or amount of the alleged underlying tax liability that Respondent claims to be owed by Petitioner for the 2001 and 2002 tax years.

c. Fulfill Respondent's obligation under 26 CFR 301.6203-1 by fulfilling Petitioner's request for a true and correct photocopy of the record of assessment that shows the signature of the assessment officer, so that Petitioner may determine for himself the assessment's complete compliance with all related provisions of law, and verify or refute his personal liability.

d. Meet Respondent's burden of proof in this proceeding pursuant to 26 USC 6201(d) to produce reasonable verification of those information returns on which Respondent has based its claims.

e. Show cause why Respondent is not obligated under Section 93 of the Revenue Act of 1862 to receive and process Petitioner's sworn declaration of annual income liable to be assessed as declared on Petitioner's filed 2001 and 2002 individual income tax returns.

f. State with precision and clarity all facts and law in support of Respondent's claim that Petitioner's filed 2001 and 2002 individual income tax returns are in some manner incomplete, incorrect, or otherwise defective, should Respondent actually be making such a claim.

g. Fulfill Respondent's obligation under 26 USC 6402(k) to provide a meaningful explanation for the disallowance of Petitioner's claim for refund, which Petitioner made when he filed his 2001 individual income tax return.

h. Meet Respondent's burden of proof to show that the taxes alleged to be owed by Petitioner were lawfully assessed in accordance with 26 USC 6201(a)(1).

Or alternately,

2. Accept and process Petitioner's filed 2001 and 2002 individual income tax returns, promptly issue closing notices consistent therewith, and return to Petitioner all monies belonging to Petitioner presently in the custody of the United States, including accrued interest thereon as provided by law.

Assignments of Errors Committed in Notice of Determination

Joseph Alan Fennell, Petitioner

Comes now the Petitioner before this Honorable Court and cites the errors committed in the Notice of Determination and the Attachment thereto.

Pursuant to the verbal instructions provided to Petitioner by the Clerk of the Court, no evidentiary documentation has been attached to this Assignment of Errors.

A. Respondent willfully denied Petitioner due process of law in violation of the Fifth Amendment.

Facts

a. Respondent acted to deprive Petitioner of the opportunity to testify in response to the statements contained in the "attached statement" that accompanied Respondent's Notice of Determination (referred to herein as the Attachment). Respondent made numerous false, misleading, erroneous, and irrelevant assertions in the Attachment that it had not previously raised during the Collection Due Process Hearing. Petitioner first learned of the content of the Attachment when he received it in the same mailing as the Notice of Determination. Respondent's issuance of the Notice of Determination administratively concluded the Collection Due

Process Hearing. Respondent thus deprived Petitioner of the opportunity to enter his testimony into the record of the Collection Due Process Hearing with respect to the new assertions set forth in the Attachment, and thus violated a fundamental requirement of due process, that being the opportunity to be heard.

> "A fundamental requirement of due process is "the opportunity to be heard."" *Grannis v. Ordean, 234 U.S. 385, 394*

b. Respondent's willfulness in this matter is proven by the following facts. In Petitioner's Constructive Notice of October 22, 2007, Petitioner plainly informed Respondent that it had deprived Petitioner of due process of law by prematurely issuing its Notice of Determination. Petitioner offered Respondent fifteen days to rebut Petitioner's claim that he had been deprived of due process, and offered Respondent an additional fifteen days to respond if Respondent would retract its Notice of Determination. Petitioner informed Respondent in the Constructive Notice of October 22, 2007 that failure to respond constituted an admission of the truth of the allegation. Respondent has not responded at all.

The Constructive Notice of October 22, 2007 was addressed to D.A. Daigle, the signer of the Notice of Determination. This document was delivered by Kenton Fleming on October 22, 2007 to the Atlanta IRS Appeals Office located in Room 1455,

401 West Peachtree Street NW, Atlanta, Georgia, and placed in the care of an employee of the Atlanta IRS Appeals Office representing herself as the assistant to D.A. Daigle. Kenton Fleming is not a party to this action.

B. Respondent erred by refusing to allow Petitioner to challenge the alleged existence or amount of the underlying tax liability during the Collection Due Process Hearing.

Facts

a. Respondent was under a duty during the Collection Due Process Hearing to consider whether the requirements of any applicable law or administrative procedure were met. Petitioner has maintained from the outset that he has never been afforded the opportunity to challenge the existence or amount of the alleged underlying tax liability in a proper venue as provided by 26 USC 6330(c)(2)(B). Petitioner informed Respondent in writing of his intentions to do at the Collections Due Process Hearing at the time he submitted his written request for the hearing.

Respondent repeatedly asserts in the Notice of Determination and Attachment that "the taxpayer received a statutory notice of deficiency for each year and consideration of his liability is precluded under IRC §6330(c)(2)(B)." The notices to which Respondent refers are identified as Letter

3219(SC/CG). Petitioner received a separate Letter 3219(SC/CG) for the 2001 and 2002 tax period, respectively.

The theory being posited by Respondent is that, because a letter was sent purporting to be a "notice of deficiency", it automatically acquired the status of a "statutory notice of deficiency" as contemplated by 26 USC §6330(c)(2)(B). That section states:

> B) Underlying liability
> The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not ***otherwise*** have an opportunity to dispute such tax liability.
> (Emphasis added.)

It is clear from the inclusion of the word ***otherwise*** that Congress intended that a statutory notice of deficiency provide the recipient with a clearly communicated opportunity to challenge the existence or amount of the underlying tax liability for any tax period in an appropriate venue. Any document purporting to be a statutory notice of deficiency that does not communicate such an opportunity does not comply with the statute, and thus is not a "statutory" notice of deficiency.

This statutory requirement is reflected in the Internal Revenue Manual. Part 1 of Section 4.14.1.6 (10-30-2004)

states that a notice of deficiency includes the following information:

> The notice of deficiency is a legal determination that is presumptively correct. The notice of deficiency consists of:
>
> - a letter explaining the purpose of the notice, the amount of the deficiency ***and the taxpayer's options,***
> - a waiver if the taxpayer should decide to agree to the additional tax liability,
> - a statement showing how the deficiency was computed, and
> - an explanation of the adjustments.
>
> (Emphasis added.)

Compliance with the Internal Revenue Manual requires that all of the options appropriate for the "taxpayer" must be explained in a true "notice of deficiency".

The Letter 3219(SC/CG) sent to Petitioner fails to explain all of the options available to Petitioner. In fact, the Letter 3219(SC/CG) makes no mention of the only option that was appropriate to Petitioner's circumstances, which was that of requesting an Appeals Conference for the purpose of disputing the alleged underlying tax liability. The failure of the Letters 3219(SC/CG) to conform to the Internal Revenue Manual's requirements for a notice of deficiency deprived Petitioner of a critical element of due process of law that Congress intended to be provided, that being the opportunity to challenge the existence or amount of the underlying tax liability. Thus, the Letter 3219(SC/CG) does

not meet the criteria of a "statutory notice of deficiency", and Respondent's assertion that the Letter 3219(SC/CG) is a "statutory notice of deficiency" is in error.

b. Although the Letter 3219(SC/CG) did mention the option of contesting the notice of deficiency in Tax Court, this was not an appropriate remedy for the Petitioner, for the reasons that follow.

The term "deficiency" is defined in 26 USC 6211(a) as being, to condense a tediously lengthy formula, the difference in the amount of tax declared on a return and the amount of tax imposed by Subtitle A or B, or chapter 41, 42, 43, or 44. A "deficiency" does not contemplate the initial amount of income declared on a return, but rather, the calculation of tax on the income declared.

There is actually no "deficiency" at issue for the 2001 and 2002 tax periods, or at least, no facts have been presented to Petitioner to suggest that there is. What ***has been*** at issue, at least since Petitioner filed his returns, is whether the Respondent is obligated under Section 93 of the Revenue Act of 1862 (now restated with no substantive change in meaning in Section 3173 of the Revenue Act of 1873, as amended in 1919) to receive the amount of annual income

liable to be assessed as declared by Petitioner under penalty of perjury on his 2001 and 2002 income tax returns.

On the afternoon of September 26, 2007, the day prior to the scheduled Collection Due Process Hearing, a verbal telephone conversation transpired between Respondent and Petitioner. During this discussion, Respondent claimed that notification of the right to petition the Tax Court satisfied the requirement that the Petitioner be afforded the opportunity to dispute the alleged underlying tax liability.

The next day, Petitioner submitted into the record of the proceeding his Constructive Notice of September 27, 2007. In this document, Petitioner pointed out that the jurisdiction of the Tax Court is limited to matters involving the determination of the correct amount of tax due based on the proper application of the rate of tax, and the allowability of claimed deductions, and does not include the issue of the initial amount of income to which the tax is applied, or from which deductions may or may not be allowed.

Petitioner was mindful of this Court's specific jurisdiction when he received the Letters 3219(SC/CG). Petitioner also knew full well that a true "deficiency" was a legal impossibility until Respondent affirmatively and explicitly asserted some legal defect with Petitioner's returns that

prevented Respondent from accepting and processing them. Respondent has never made any such assertion, or if it has, it has not done so with sufficient clarity to enable Petitioner to remedy the defect.

The only semblance of an explanation for not accepting Petitioner's filed returns was set forth in Respondent's Letter 3176 dated June 16, 2005. This letter claimed that Petitioner's 2001 and 2002 income tax returns could not be accepted because they "does [sic] not contain the information the law requires you to give, and does [sic] not comply with certain Internal Revenue Code Requirements". Petitioner replied to this letter on July 15, 2005, and asked Respondent to identify the information that was not contained in his returns that the law required him to give, and also how his returns failed to comply with certain IRC requirements. Respondent has never replied to Petitioner's requests.

c. The Attachment, which was issued concurrent with the Notice of Determination, does not mention Respondent's initial "Tax Court" argument, but it does assert a new and equally flawed argument. On page 3, under *Issues Raised in Letter dated September 20, 2007*, Item 1 states "The taxpayer was provided telephone contact numbers where he could obtain additional information if he considered the instructions insufficient."

It was not possible for Petitioner to have considered the instructions to be insufficient, as no instructions whatsoever were included in the Letter 3219(SC/CG). One cannot evaluate the sufficiency of that which does not exist. The enclosures listed in the Letter 3219(SC/CG) indicate that no other documentation describing options available to Petitioner was included with the Letter 3219(SC/CG).

Petitioner's many unsuccessful attempts to contact a living human being at the contact number shown on the Letter 3219(SC/CG) are irrelevant. Respondent bears the burden of proving that the providing of a telephone number is an effective means of communicating available options to the recipient of a statutory notice of deficiency, and it has offered no proof that any living human being at this number ever even answered Petitioner's calls, much less offered instructions on how to request an Appeals Conference. Respondent's assertion, that the sole act of providing a telephone number constitutes sufficient notice to Petitioner of the options available to him, is in error.

Nevertheless, Petitioner did respond to the Letters 3219(SC/CG) within ninety days of the date of these letters,

and his response affirmatively rebutted Respondent's alleged claim of an increase in tax due from Petitioner.

d. Since the time that Petitioner responded to the Letters 3219(SC/CG), Petitioner has learned that instructions for requesting an Appeals Conference are typically included in the letter that accompanies an examination report. For example, a Notice CP2000 is accompanied by *The Examination Process Booklet,* which explains how to request an Appeals Conference, and the Notice CP2000 refers to this booklet.

Petitioner received letters accompanied by examination reports from Respondent dated November 22, 2005, but the letters sent to Petitioner make no mention of the option of requesting an Appeals Conference, nor do they refer the reader to any enclosed booklets. These letters bore the designation "Spec Ltr CE22-L1862". These letters offered only three options if the recipient did not agree with the proposed adjustments – "file a return, explain why you did not file a return, or mail us any information you would like considered". Since Petitioner had already filed his returns, he chose the latter of the three options, and replied on December 21, 2005 with a letter specifically enumerating each error shown on the accompanying Forms CG-4549. Petitioner requested that Respondent reply to his letter within thirty days, but Respondent did not reply.

Respondent has never informed Petitioner of the proper method for requesting an Appeals Conference to dispute the alleged underlying tax liability, in clear violation of due process of law.

C. Even if the Letter 3219(SC/CG) did constitute a valid "statutory notice of deficiency", Respondent violated administrative procedures by issuing it.

Facts

a. Respondent was under a duty during the Collection Due Process Hearing to consider whether the requirements of any applicable law or administrative procedure were met. Internal Revenue Manual Section 4.14.1.3 (10-30-2004) sets forth the criteria for issuance of a notice of deficiency.

> A notice of deficiency may be issued when the:
>
> - expiration of the statute of limitations is imminent and no extension can be obtained,
> - taxpayer does not file a valid protest in response to a 30-day letter ***or fails to respond to a 30-day letter***, or
> - taxpayer requests the issuance of the notice in order to petition the case to the Tax
>
> *(Emphasis added.)*

On December 21, 2005, Petitioner mailed his response to two Spec Ltr CE22-L1862 notices dated November 22, 2005. Each letter requested that Petitioner respond within thirty days

from the date of the letter. Proof of Petitioner's timely reply and Respondent's receipt was provided to Respondent along with Petitioner's Constructive Notice of October 22, 2007. Because Petitioner did not fail to respond to the 30-day letter, the Internal Revenue Manual's criteria for issuance of a notice of deficiency was never met, and the notices should never have been sent. Respondent has not responded to Petitioner's assertion of error in this matter.

D. Respondent failed to fulfill Petitioner's request for information made pursuant to 26 CFR 301.6203-1 before issuing the Notice of Determination.

Facts

a. In Petitioner's Constructive Notice of September 27, 2007, Petitioner made an explicit request of Respondent, pursuant to 26 CFR 301.6203-1, for a true and correct photocopy of the record of assessment which shows the signature of the assessment officer, so that Petitioner could verify the existence of the assessment, and also determine for himself the assessment's complete compliance with all related provisions of law. Petitioner has never claimed that Respondent's failure to furnish such documentation invalidates the alleged assessment. Petitioner specifically stated that the making of the request was not to be considered or construed as an admission of "taxpayer" status

or of liability for any tax or penalty. Petitioner also informed Respondent that a refusal to cooperate with this request would be recognized as an acknowledgement that Petitioner was not, in fact, liable for the tax alleged to be due and owing or otherwise collectible in any manner on Respondent's Letter 1058 dated February 3, 2007. Petitioner further explained that the request was made for the purpose of verifying or refuting Petitioner's personal liability, and as such, an aggregate record would not satisfy the request, as compliance with the regulation requires documentation sufficient to clearly establish Petitioner's ***personal*** liability.

Respondent claimed in the Attachment that Petitioner's request was "frivolous or without merit", even though Petitioner made the request pursuant to a written treasury regulation, and the fulfillment of it constitutes the most basic provision of due process of law. For these reasons, Respondent's claim is in error. Respondent has yet to prove that a record of assessment that complies with the requirements of 26 CFR 301.6203-1 actually exists.

E. Respondent has failed to comply with the provisions of 26 USC §6402(k) with respect to Petitioner's 2001 Form 1040.

Facts

a. Respondent was under a duty during the Collection Due Process Hearing to consider whether the requirements of any applicable law or administrative procedure were met. On page 4 of the Attachment, under the heading "Issues Raised in Letter dated September 27, 2007", Respondent makes the following statement:

> "Disallowance of refund pursuant to IRC §6402(k)
>
> The examination report provided an explanation for the proposed assessment. Since a balance is due, there is no refund."

Either Respondent is engaging in deliberate misdirection, or it has confused Petitioner's 2001 Form 1040 with its own examination report. In either event, the Respondent is in error. The claim for refund is Petitioner's 2001 Form 1040.

Furthermore, the above-referenced examination report does not provide an explanation for why its proposed assessment is correct and Petitioner's 2001 1040 is not.

No explanation for Respondent's failure to return Petitioner's deposits made against potential 2001 tax liabilities has yet been given, a clear and unequivocal violation of 26 USC §6402(k).

> 26 USC 6402(k) (P. L. 105 - 206 § 3505):
> Explanation of reason for refund disallowance.

> In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.

F. The taxes alleged to be owed by Petitioner were not lawfully assessed because there is no signed return that serves as the basis of the assessment. The existence of such a return is a legal impossibility.

Facts

a. Petitioner made this assertion in the Constructive Notice of September 27, 2007. Respondent was under a duty during the Collection Due Process Hearing to consider whether the requirements of any applicable law or administrative procedure were met. Respondent claims in the Attachment that this claim and/or issue was reviewed and considered "frivolous or without merit". However, Petitioner's assertion is based on nothing more than fact and the operation of law.

The assessment authority of the Secretary is set forth in 26 USC 6201.

> Section 6201. Assessment authority
>
> (a) Authority of Secretary
>
> The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time

> and in the manner provided by law. Such authority shall extend to and include the following:
>
> (1) Taxes shown on return
> The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

Thus, a return must first exist in order for an assessment of taxes to be made. Furthermore, Respondent has disregarded Petitioner's sworn declarations of the amount of income received and tax due thereon, which are Petitioner's 2001 and 2002 Forms 1040, and has treated them as though never filed.

Despite the broad language set forth in 26 USC 6020(b), the Secretary has no authority to execute an annual return of income. The Secretary has the authority to assess tax, but not to determine the amount of income on which the tax is imposed. The limits of the Secretary's authority to create returns under 26 USC 6020(b) are diligently observed and reiterated in the relevant portion of the current Internal Revenue Manual:

> 5.1.11.6.8 (03-01-2007)
> IRC 6020(b) Authority
>
> The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):
>
> 1. Form 940, Employer's Annual Federal Unemployment Tax Return;
> 2. Form 941, Employer's Quarterly Federal Tax Return;
> 3. Form 943, Employer's Annual Tax Return for Agricultural Employees;
> 4. Form 944, Employer's Annual Federal Tax Return;

5. Form 720, Quarterly Federal Excise Tax Return;
6. Form 2290, Heavy Vehicle Use Tax Return;
7. Form CT-1, Employer's Annual Railroad Retirement Tax Return;
8. Form 1065, U.S. Return of Partnership Income.

The foregoing is a complete list of the returns that can be executed by the Secretary. Nowhere in this list is there a form number for an annual return of income. Were it otherwise, the authority of the Secretary would be in inherent conflict with the explicit specifications of Section 93 of the Revenue Act of 1862 and related statutes and regulations. Thus, a signed return could not exist unless the Secretary exceeded his authority under 26 USC 6020(b). A "Substitute For Return" is not an actual return; as such, it does not satisfy the requirement that there first be a signed return before an assessment can be made. Respondent's claim that Petitioner's assertion is "frivolous or without merit" is in error.

G. Respondent disobeyed the law when he failed to assess duties on the sums of annual income declared by Petitioner on his 2001 and 2002 Forms 1040.

Facts

a. Petitioner made this assertion in the Constructive Notice of September 27, 2007. Respondent was under a duty during the Collection Due Process Hearing to consider whether the requirements of any applicable law or administrative

procedure were met. Respondent stated in the Attachment that this claim and/or issue was reviewed and considered "frivolous or without merit". However, Petitioner's assertion is based on nothing more than the operation of law as applied to Petitioner's 2001 and 2002 individual income tax returns.

Section 93 of The Revenue Act of 1862, (now restated with no substantive change in meaning in Section 3173 of the Revenue Act of 1873 (Revised Statutes), as amended in 1919), reads:

> "And be it further enacted,…that any party, in his or her own behalf,…shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,… liable to be assessed,… and the same so declared ***shall be received*** as the sum upon which duties are to be assessed and collected."
> (Emphasis added.)

Even though Petitioner's 2001 and 2002 income tax returns lack no information on which their substantial correctness can be judged, and even though the enacted statute requires that the amount of Petitioner's declared annual income shall be received as the sum upon which duties are to be assessed and collected, Respondent has failed to process them. Respondent's claim that Petitioner's assertion is "frivolous or without merit" is in error.

H. Certain Statements Made by Respondent in the Attachment are false, intentionally misleading, erroneous, or irrelevant.

Facts

a. Respondent affirms in the Attachment that a taxpayer has the right to rebut an erroneous information return, but states that the rebuttal needs to have "merit". The implication is that Petitioner's rebuttals of erroneous information returns included with his 2001 and 2002, which were prepared from Petitioner's firsthand knowledge of his own activities and sworn to under penalty of perjury, are somehow less legally sufficient than the erroneous information returns that they rebut. However, Respondent carefully refrains from making any outright claim that this is so. This statement is thus intentionally misleading, for if Petitioner's rebuttals did lack merit, Respondent could have easily set forth the reason(s) why. Respondent has admitted that an American Citizen has the right to rebut an erroneous information return on an annual return of income, which is precisely what Petitioner was forced to do in order to file truthful income tax returns.

b. Respondent stated that Petitioner did not deny knowing the parties identified as "PAYER" on Petitioner's sworn rebuttals of information returns. This statement is irrelevant. The federal income tax is not imposed on one's knowledge of or familiarity with a party. Respondent makes this statement only to cloud the sole pertinent issue involving the parties identified as "PAYER", which is

whether they actually paid nonemployee compensation in the course of a trade or business to Petitioner.

c. IRS Appeals stated that Petitioner did not deny providing services to the parties identified as "PAYER" on Petitioner's sworn rebuttals of information returns. This statement is both irrelevant and intentionally misleading.

It is irrelevant because the federal income tax is not imposed on "services". It is imposed on taxable income, i.e., gains, profits, and income minus allowable deductions. It is misleading in that Petitioner neither admitted or denied providing "services", because Respondent did not define what it meant by the word. The word is used throughout the Internal Revenue Code to refer to all manner of acts that can be summarily described as "the performance of the functions of a public office". The word has an entirely different meaning in the vernacular.

Respondent makes this statement only to cloud the sole pertinent issue involving the parties identified as "PAYER", which is whether they actually paid nonemployee compensation in the course of a trade or business to Petitioner.

d. Respondent stated that Petitioner did not deny receiving payment from the parties identified as "PAYER" on

Petitioner's sworn rebuttals of information returns. This statement is both irrelevant and intentionally misleading.

It is irrelevant because the federal income tax is not imposed simply on "payments". Were it otherwise, the instructions for Form 1099-MISC would not read as they do.

> Trade or business reporting only.
> Report on Form 1099-MISC only when payments are made in the course of your trade or business. ***Personal payments are not reportable.***
> (Emphasis added.)

The statement is intentionally misleading, in that Petitioner neither admitted or denied receiving "payments". Furthermore, it suggests that Petitioner bears some burden of proving that he *did not* receive "payments" in order to be absolved from the alleged liability. The truth of the matter is that Respondent bears the burden of proving that Petitioner's income tax returns are false or legally defective in some manner, and if no proof exists, Respondent is obligated to accept and process them.

Nevertheless, Petitioner has explicitly denied receiving payments of nonemployee compensation made in the course of a trade or business, and has sworn to the truth of such under penalty of perjury in statements that are included with, and are an integral part of, his 2001 and 2002 income tax returns. Petitioner's sworn rebuttals are based solely on

law and Petitioner's firsthand knowledge of his own activities.

e. Respondent stated in the Attachment that Petitioner "stated they (meaning the parties identified as "PAYER") should not have issued the Forms 1099 because they should only be issued in connection with a trade or business". This statement misquotes Petitioner. Petitioner stated that he did not receive any payments in the course of a trade or business from the parties identified as Payers, and thus, the Forms 1099-MISC should not have been issued. Petitioner also pointed out to Respondent that the instructions for Form 1099-MISC state that only payments made in the course of a trade or business should be reported on Form 1099-MISC.

   The need to enumerate such misquotes may have been avoided had Respondent complied with Petitioner's request made pursuant to 26 USC 7521(a)(1) to audio record the Collection Due Process Hearing. Respondent erred by denying Petitioner's request for such.

f. Respondent stated in the Attachment that Petitioner provided no specific information that identified any legal or administrative procedure errors. This is a false statement. Many of the preceding assignments of error were provided to

Respondent in Petitioner's Constructive Notice of September 27, 2007.

g. Respondent stated in the Attachment that Petitioner provided copies of the statutory notices of deficiency that he received. This is, technically, a false statement. The Letters 3219(SC/CG) do not identify themselves as "statutory notices of deficiency", and as proven by the facts and law presented herein, they are not "statutory notices of deficiency".

h. Respondent stated in the Attachment that Petitioner did not provide any information or documents that rebuts the Forms 1099 filed. This is a ***brazen lie*** that even contradicts information set forth within the Attachment itself under the section titled "*II. Background*".

Petitioner's 2001 and 2002 income tax returns included sworn statements based upon Petitioner's firsthand knowledge, which were signed by Petitioner under penalty of perjury, and which explicitly rebut the receipt of nonemployee compensation alleged to have been paid to Petitioner in the course of a trade or business by the "Payer" of each Form 1099-MISC submitted to the IRS for the 2001 and 2002 tax years. Petitioner's sworn statements, which are based on his firsthand knowledge of his own activities, report the

amount of nonemployee compensation paid to him in the course of a trade or business from each alleged Payer as "$-0-", or "none". Petitioner meaningfully rebutted all allegations of payments of nonemployee compensation made in the course of a trade or business in this manner.

Respondent received Petitioner's complete 2001 and 2002 income tax returns on September 27, 2007, and again on September 28, 2007, and thus had these sworn statements in its possession when it made this statement. Respondent's statement can be construed only as a mendacious attempt to conceal the truth.