

## **A Quirky Series Of Filings Draws Quirky Federal Charges**

Roger Menner, a one-time non-filer and sometime "861" adherent who eventually found his way to CtC, filed two sets of odd, sort-of-(but not quite)-CtC-educated tax returns in 2005 which nonetheless appear to have forced the DOJ into an interesting contortion. His story merits our attention.

Roger's non-filing goes back at least to 1991, and resulted in convictions for that year and 1992-1995. In 2000, in order to comply with supervised release conditions, Roger filed returns for each of these years embracing the "861 argument" and whatever other nonsense was being pushed at "taxgate" back then (a sample of which is included in [this post](#) discussing the mistaken notion that the lack of an OMB number on a 1040 is of any significance to the typical American needing to rebut erroneous "information returns" and/or recover withheld or paid-in deposits).

These returns (which were each backdated to what would have been a timely filing date) showed zero income, and included Form 8275 "Disclosure Statements" declaring all remuneration to have been "excludable from gross income pursuant to regulations". Schedules SE and C (Self-Employment Tax, Profit or Loss from Business) showing -0-s were also included, along with Forms 4852 (referencing payers who had actually issued 1099MISCs concerning Roger, rather than the W-2s or 1099Rs to which those forms actually apply), which declared -0- in the "wages" lines and nothing on the withholding lines, and cited the "Regulations at 26 CFR 1.861 and Temporary Regulations at 1-861-8T" as explanations.

In the "income" section of those 1040s, the only line other than the total actually showing a number was the line for "Business income or (loss)". The other entry fields in the section were merely lined out.

In August of 2002, Roger received Notices of Deficiency for each of these years based on the 1099s that had been issued during the period and which still stood unrebuted. He did not respond to the NODs and in December of 2002 began being dunned for the calculated outstanding liabilities.

Over the course of the next couple of years things proceeded in a predictable fashion, with the IRS pursuing collections activities, which, by early 2004 had escalated to contacting Roger's known associates and the filing of a lien. In early December of 2004, Roger found louthorizons.com and ordered a copy of CtC and the Companion CD.

By the following August, Roger had at least gotten a better sense of the real nature of his situation. Hoping to repair the damage from the previous filings, he submitted 1040Xs for 1991 through 1995, along with rebuttals to at least some of the 1099s that stood in the record against him.

Unfortunately, Roger's new returns had their own problems.

For instance, while the original returns filed in 2000 had shown zeros for "adjusted gross income", the "amending returns" Roger produced listed the totals calculated by the IRS as Roger's AGI on its "notices of deficiency", instead. At the same time, while the NODs had identified many payers as supposedly attesting to payments of "income" to Roger (or at least being relied upon in that regard by the "service"), Roger only rebutted a few of these allegations for each year.

In short, these "amending returns" didn't actually (or accurately) amend the previous returns (the likelihood that Roger's previous returns had been deemed "frivolous" and treated as un-filed notwithstanding). Furthermore, while the 1040Xs included rebuttals to a few relevant allegations, they effectively acquiesced to the majority of IRS-cited assertions that Roger had indeed received "income" from the conduct of a "trade or business".

Three months later, in late November, 2005, Roger exacerbated his situation by spontaneously filing another batch of original 1040s, this time for the years 2001 - 2004. These filings occurred despite there apparently being no "information returns" to which he needed to respond, no "income" he was obliged to report, and nothing needing to be claimed for refund.

No rebuttal instruments were included with these latter filings. However, a generic sworn statement was included in the envelope in which they were sent which contained the language *"As stated on each Form [referring to the batch of four 1040s], for these tax years I had no "Wages", (26 USC 3401 and 3121), "gains profits or income" made in the course of a "trade or business", (26 USC 1401 & 7701(a)(26)), or any other "income"."*

It appears that at the time of the filing of this latter batch of documents, Roger was already under a criminal investigation. Less than a month after the date on the attachment, he discovered that an IRS CI agent had been interviewing his associates.

Nonetheless, Roger continued to protest and dispute the ongoing collections activities based on the 1991 - 1995 defaulted NODs and Tax Court rulings; and also filed another single-sheet 1040 for 2005 (also with the enclosure mentioned above) the following April. Last month, after what may have been a long two-and-a-half year struggle by the DOJ to figure out just how to get around the legal effect of even his flawed filings, Roger, who probably had been sitting on someone's target list from the moment he filed those "861" returns in 2000 while still on supervised release from his previous convictions, was indicted, albeit with some highly nuanced charges.

These charges include five counts of filing 1040s *"which said income tax returns the defendant did not believe to be true and correct as to every material matter in that said return failed to disclose that the defendant was engaged in the operation of a business activity from which he received gross receipts or sales and incurred deductions..."* (referring to the single-sheet, unprompted 1040s for 2001 - 2005); and one count of *"corruptly endeavor[ing] to obstruct and impede the due administration of the internal revenue laws by engaging in the following conduct:"* (comprising the conduct described in connection with the original 1991 - 1995 and 2001 - 2005 filings, along with being-- in essence-- uncooperative with the "service" throughout its efforts to take his property in connection with 1991 - 1995; submitting "amended returns" accompanied by *"Forms 1099 (Miscellaneous Income) which voided and reduced income previously reported by employers, established at trial and affirmed by the IRS civil process"*; and challenging the IRS audit reconsideration related to the rejection of those "amended returns").

All of Roger's variously-flawed filings taken together created a unique vulnerability to these quirky charges.

For instance, the submission of "trade or business"-related schedules in 2000 and the leaving of allegations of "trade or business"-related earnings unrebutted in the 2005 "amending" filings-- combined with the filing of 2001 - 2005 returns with nothing to report, rebut or reclaim (and thus suggesting that he believed himself under a general obligation to file)-- lend themselves to unfortunate presumptions about the legal character of his activities. These presumptions are, in fact, the essence of what is charged in regard to the latter filings-- remember, those charges don't actually assert that Roger HAD any "income" (or any liability, either)-- nor do they charge evasion of any kind.

On the contrary, Roger is merely charged with making returns which are allegedly false because they don't report anything at all concerning business activities, while (assumedly) Roger had (and knew and believed that he had) business activities of a sort about which he was, in fact, required to report. These charges are entirely "willfulness" based (that is, they are grounded in the proposition that Roger deliberately disregarded a known legal duty).

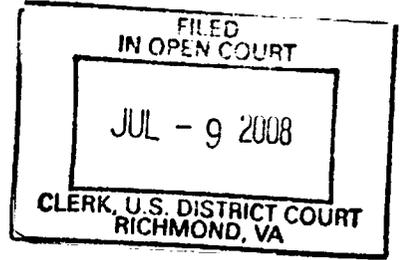
The remaining count is mostly of the "Let's throw a bunch of crap at the wall and see what sticks," variety. Frankly, most of it won't.

I don't believe it is illegal to protest collections activities one believes to be unlawful and/or contrary to established policy, or to *"provid[e] false information regarding the validity of his social security number"* (whatever that means), or to refuse *"to accept or otherwise act upon notices provided by the revenue officer regarding tax liability"* (whatever THAT means). When there really IS an enforceable liability, there is a mechanism for enforcing it, with or without the cooperation of the liable party. Failing to "cooperate" is no more a crime than is failing to drive your car to the repo man's place after you realize that you've missed a payment or two.

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Roger never filed actual CtC-educated returns, and the charges related to what he DID file are highly idiosyncratic. That being said, however, the very fact that "creative" charges of this sort have been brought against anybody is an occasion for all of us to take notice; and the "obstructing and impeding" charge embodies a pernicious vagueness threatening to every American, regardless of context. There are also some opportunities to see a few interesting legal issues addressed in this affair due to some custom definitions involved in the statutes under which Roger is charged.

Consequently, I encourage everyone to keep this matter on his or her radar screen.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA

v.

ROGER CHARLES MENNER,

Defendant.

) CRIMINAL NO. 3:08cr 222  
)  
) 26 U.S.C. § 7206(1)  
) Making and Subscribing a False  
) Tax Return (Counts 1-5)  
)  
) 26 U.S.C. § 7212(a)  
) Obstructing and Impeding the  
) Administration of the Internal  
) Revenue Code (Count 6)

INDICTMENT

July 2008 Term - At Richmond, Virginia

THE GRAND JURY CHARGES THAT:

INTRODUCTION

At all times material to this indictment:

1. The Internal Revenue Service of the Department of the Treasury ("IRS") is an agency of the United States government responsible for the administration of federal income tax laws.
2. Federal law, including 26 U.S.C. §§ 6012 and 6072 and related provisions, requires that each eligible individual taxpayer file a U.S. Individual Income Tax Return, Form 1040, on or before the 15th day of April following the close of the calendar year: showing their filing status; claiming exemptions and dependents; reporting income, expenses, and deductions; showing any association with other income producing activity; and identifying any tax due to the government or a refund if the tax was overpaid.

3. Defendant ROGER CHARLES MENNER worked in and around the Richmond, Virginia metropolitan area as a carpenter. Through those continuing business activities, MENNER received and realized business receipts on a recurring basis.

**COUNTS ONE THROUGH FIVE**  
**(Making and Subscribing a False Tax Return)**

1. The Grand Jury re-alleges and incorporates by reference the Introduction section contained above, as if fully set forth herein.

2. On or about the dates set forth below in Counts One through Five, in the Eastern District of Virginia, defendant ROGER CHARLES MENNER, did willfully make and subscribe a U.S. Individual Income Tax Return, for the calendar years described below, each of which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax returns the defendant did not believe to be true and correct as to every material matter in that the said returns failed to disclose that the defendant was engaged in the operation of a business activity from which he derived gross receipts or sales and incurred deductions, whereas, as the defendant then and there well knew and believed, he was required by law and regulation to disclose the operation of this business activity, the gross receipts or sales derived therefrom and the deductions he incurred, each instance constituting a separate count of this Indictment:

Count	Date (in or about)	Tax Return
1	November 21, 2005	U.S. Individual Income Tax Return (Form 1040) for calendar year 2001
2	November 21, 2005	U.S. Individual Income Tax Return (Form 1040) for calendar year 2002

Count	Date (on or about)	Tax Return
3	November 21, 2005	U.S. Individual Income Tax Return (Form 1040) for calendar year 2003
4	November 21, 2005	U.S. Individual Income Tax Return (Form 1040) for calendar year 2004
5	April 14, 2006	U.S. Individual Income Tax Return (Form 1040) for calendar year 2005

(In violation of Title 26, United States Code, Section 7206(1)).

**COUNT SIX**

(Obstructing and Impeding the Administration of the Internal Revenue Code)

1. The Grand Jury re-alleges and incorporates by reference the allegations contained in the Introduction section and Counts One through Five, as if fully set forth herein.
2. Beginning in or about May 2000 and continuing through on or about April 14, 2007, in the Eastern District of Virginia, defendant ROGER CHARLES MENNER, did corruptly endeavor to obstruct and impede the due administration of the internal revenue laws by engaging in the following conduct:

Charged Conduct
Submitting U.S. Individual Income Tax Returns, for the calendar years 1991 through 1995, 1999, and 2000 through 2006, each of which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which asserted that he had zero tax liability for each of the years and failed to disclose that the defendant was engaged in the operation of a business activity from which he derived gross receipts or sales and incurred deductions, whereas, as the defendant then and there well knew and believed, he was required by law and regulation to disclose the operation of this business activity, the gross receipts or sales derived therefrom and the deductions he incurred.

**Charged Conduct**

Disregarding, delaying, and frivolously challenging IRS' personal contacts, various correspondence, and Notices of Deficiency regarding the defendant's outstanding tax liability for calendar years 1991 through 1995 and his legal obligations to pay tax liabilities.

During a meeting with IRS Revenue Officer Karen Grainer-Lubore, frivolously contesting the assessments levied by the IRS for calendar years 1991-1995, refusing to provide information regarding his employment or sources of income, providing false information regarding the validity of his social security number, and refusing to accept or otherwise act upon notices provided by the revenue officer regarding tax liability

Submitting Amended U.S. Individual Income Tax Returns, for the calendar years 1991 through 1995, each of which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax returns were accompanied by false Forms 1099 (Miscellaneous Income) which voided and reduced income previously reported by employers, established at trial, and affirmed by the IRS civil process.

Submitting a "Notice of Formal Written Protest" challenging the IRS audit reconsideration decision related to the rejection of the Amended U.S. Individual Income Tax Returns, for the calendar years 1991 through 1995, filed in August 2005.

(In violation of Title 26, United States Code, Section 7212(a)).

A TRUE BILL  
Pursuant to the E-Government Act,  
the original of this page has been filed  
under seal in the Clerk's Office.

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FOREPERSON

CHUCK ROSENBERG  
UNITED STATES ATTORNEY

By:



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Michael R. Gill  
Assistant United States Attorney