

Gary XXXXXX

June 16, 2006

Internal Revenue Service
Ogden, UT 84201-0030

Certified Mail: XXXX XXXX XXXX XXXX XXX

Re: XXXXXXXXXX; 105C dated June 2, 2006; Tax Period: Dec. 31, 1997

Name: Gary XXXXXX **Address:**
SSN: XXXXXXXXXX **Daytime telephone Number:**

Sir/Madam:

I wish to appeal the attached disallowance to the Appeals Office.

The disallowed \$19,498.21 was paid and applied to an alleged 1997 federal income tax debt. My 1997 Form 1040 reveals that I have no federal income tax debt for 1997 but rather, a credit owing. Additionally, my 1997 tax return was filed within the statute of limitations allowing a credit or refund of the amount paid. Note that 26 USC 6402(a) states:

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d) and (e), refund any balance to such person.

Also, Sec. 301.6402-3(a)(1) states,

(A) In the case of a claim for credit or refund filed after June 30, 1976 -

(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

The letter 105C states "Your claim is based on a frivolous position..." This would imply that my claim for refund is being disallowed based on 26 USC 6702(a)(2)(A) or 26 USC 6702(a)(2)(B). However, in order to apply 26 USC 6702(a)(2)(A) or 26 USC 6702(a)(2)(B), the return must first meet either 6702(a)(1)(A), or 6702(a)(1)(B).

I based my claim on simple arithmetic and the clear words of the relevant law. The information returns submitted by the various payers are erroneous, and my signed, sworn firsthand testimony attached to my return disputes and corrects these errors. Thus, the figures on my return are correct, and entirely consistent with the sworn first-hand testimony attached thereto. Based on the correct information, I calculated my taxable income and correctly applied the appropriate tax

tables.

26 CFR 601.103 states, "In general, each taxpayer (or person required to collect and pay over the tax) is required to file a prescribed form of return which shows the facts upon which tax liability may be determined and assessed. I assumed this also applies to "non-taxpayers." If I am in error, please clarify. Thus I filed a 1040 which I believe to be the prescribed form of return to determine tax liability and to request a refund of overpayments. The sworn firsthand testimony attached to my return substantiates the facts on the face of my return. I determined my tax liability and accurately self-assessed based upon these facts.

As noted previously, the information returns submitted by various payers for tax year 1997 are erroneous. The documents I signed under penalty of perjury and attached to my return disputed and corrected these erroneous information returns. Please note in reference to this

"...a statute which imposes a tax upon an assumption of fact which the [presumed] taxpayer is forbidden to controvert is so arbitrary and unreasonable that it cannot stand under the Fourteenth Amendment." United States Supreme Court, *Heiner v. Donnan* 285 U.S. 312 (1932);

and

"...irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." United States Supreme Court, *Vlandis v. Kline*, 412 U.S. 441 (1973);

and

"A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394 . It is an opportunity which must be granted at a meaningful time and in a meaningful manner." United States Supreme Court, *Armstrong v. Manzo*, 380 U.S. 545 (1965);

and

"The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." United States Supreme Court, *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951);

and finally,

"If [a provision of the Constitution] will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system." United States Supreme Court, *Escobedo v. Illinois* 378 U.S. 478 (1964).

If we assume that the presence of the number zero on different lines of the return was used as justification to label the return frivolous, please note that according to United States v. Long, 618

F.2d 74 (9th Cir. 1980), a return containing zeros on most of the lines and signed by the taxpayer without modifications, additions, or deletions to the attestation statement is sufficient to calculate tax liability, and, therefore, constitutes a valid return.

Note that 26 USC 6702 does not consider the amount to be taxed beyond the consistency of that stated amount with supporting documentation, and the accuracy of the self-assessment based on that stated amount. The above demonstrates that my return does contain information on which the substantial correctness of the self-assessment may be judged.

Additionally, my return contains information that on its face indicates the self-assessment to be entirely correct. Therefore, my 1997 return does not meet either 6702(a)(1)(A), or 6702(a)(1)(B).

Pursuant to the clear language of 26 USC 6702, no motive may be contemplated as to why I prepared my return as I did, and the penalty cannot lawfully be assessed.

26 USC 6402(k) states, "In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance."

I am inclined to believe Congress intended that such explanations would be meaningful. There has been no indication as to why my 1997 return is considered frivolous, no indication of what specific part(s) of the return are considered frivolous, and no indication of which section(s) of 26 USC 6702(a)(1) was/were relied upon to label the return frivolous. A mere assertion that my return is frivolous without addressing these issues is not a meaningful explanation.

If this appeal results in anything other than an immediate refund of the \$19,498.21 with applicable interest added, I expect to be provided as written evidence a meaningful explanation from the party/parties who determined my 1997 return to be frivolous.

Subsequent to the arrival of the attached LTR 105C, I received a notice number CP15 indicating I have been assessed a \$500 frivolous filing penalty under Internal Revenue Code Section 6702. If I prevail in this appeal, I request and demand the frivolous filing penalty be vacated immediately regardless of the procedures/protocol outlined in the notice.

I will further observe that 26 USC 7214(a) states:

a) Unlawful acts of revenue officers or agents

Any officer or employee of the United States acting in connection with any revenue law of the United States—

- (1) who is guilty of any extortion or willful oppression under color of law; or
- (2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or
- (3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment;

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shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

I request and demand any and all due process to which I am entitled or which is in any way appropriate and/or available to me under any provision or practice of common, statutory, and/or administrative law or protocol-- including, but not limited to, that to which your notice refers; and incorporate by reference into this request and demand all relevant information included on or in that notice, a copy of which is attached. Be advised that it is my intention to audio-record any and all proceedings for which such an option is lawfully available to me. I declare that I make no admissions as to my status, the legitimacy of your implicit or explicit assertions, or the fitness of any particular legal or administrative protocol by responding to your notice or by requesting and demanding the due process referenced above.

Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete.

Gary XXXXX

Date