“Information Returns” Are NEVER Sufficient Evidence Of “Income” Payments

Although tax agencies like to act as though “information returns” such as W-2s and 1099s are unilaterally dispositive evidence of whatever they allege about payments of taxable “wages” or “non-employee compensation”, this is pure bluster (or outright corruption). The fact is, nothing on an “information return” is EVER independently-sufficient evidence of “income” payments.

> *"Defendants are correct that the 1099s, on their own, do not create tax liability. Form 1099 is an informational return, filed by a third party to the relationship between the IRS and the taxpayer, which reports income as that third party believes it to be. The Internal Revenue Code makes it clear that a Form 1099 is not the final word on what a taxpayer's taxable income is. As provided in 26 U.S.C. § 6201(d):*
>
> > *“In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item reported on an information return ... by a third party ... the [IRS] shall bear have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.”*
>
> *The Tax Court has held that a Form 1099 is insufficient, on its own, to establish a taxpayer's taxable income. See Estate of Gryder v. Commissioner,T.C. Memo. 1993-141, 1993 WL 97427, 65 T.C.M. (CCH) 2298, T.C.M. (RIA) 93,141 (1993), citing Portillo v. Commissioner,932 F.2d 1128 (5th Cir.1991). See also Portillo v. Commissioner,988 F.2d 27, 29 (5th Cir. 1993) (a Form 1099 is "insufficient to form a rational foundation for the tax assessment against the [taxpayers in this case]."). Thus, while a Form 1099 can serve as the basis for the inception of an IRS investigation, it cannot and does not, on its own, create tax liability or establish how much income the taxpayer actually received."*
> Daines v. Alcatel, S.A., 105 F.Supp.2d 1153, 1155 E.D. Washington, 2000

The “wages” definitions in the law are the simplest to look at in order to make this inescapably obvious. Those definitions, both that of “wages” for general withholding and credit against potential liability, and that of the sub-category of “wages” subject to the FICA surtaxes, each contain EXTENSIVE EXCEPTIONS-- that is, payments for services which DON’T QUALIFY AS “WAGES” EVEN WHEN EVERY QUALIFICATION FOR BEING A “WAGES”-RECIPIENT IS TRUE OR ASSUMED, NO MATTER WHAT THOSE QUALIFICATIONS MAY BE. Therefore-- listen closely, now-- a declaration of a payment of “wages” on a W-2 is NEVER SUFFICIENT IN-AND-OF ITSELF to establish that “wages” have actually been paid, NO MATTER WHAT ELSE IS ON THE FORM, IS TRUE IN FACT, OR IS PRESUMED TRUE. Similarly, nothing one says, implies, or allows to be presumed about oneself establishes or even supports an allegation that “wages” have been paid or received (other than an outright acknowledgement).

Read the following regulatory language concerning “wages” under the FICA surtax statute (in which the tax hinges on "employment" as defined at 26 U.S.C. 3121(b)):

§ 31.3121(b)-4 Employment; excepted services in general.

(a) **Services performed by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b)**. **Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American employer.** If not otherwise provided in the regulations relating to the numbered paragraphs of section 3121(b), such regulations apply to services performed after 1954.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services in an excepted class rendered by the employee.

Example. **A is an individual who is employed part time by B to perform services which are specifically excepted from employment under one of the numbered paragraphs of section 312(b). A is also employed by C part time to perform services which constitute employment. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted from employment), the exception does not embrace the services performed by A in the employ of C (which constitute employment) and the taxes attached with respect to the wages (see §31.3121(a)–1) for such services.**
(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see §31.3121(c)–1.

Could this be more clear? Payments made even to those who ARE in "employment", and ARE receiving "wages" otherwise-- even payments made for services performed on the same day, and for the same payer-- sometimes DON'T QUALIFY AS "WAGES", and generate NO TAX LIABILITY.

The same is true of the "wages" defined at 3401(a), which hinge on "employee" defined at 3401(c):

§ 31.3401(a)-2 Exclusions from wages.

(a) *In general.* (1) **The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a)**.

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

§ 31.3401(c)-1 Employee.

(h) **Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).**

As a consequence, whether any payments are "wages" is ALWAYS a "fact" question, and NEVER a "matter of law", and a mere declaration that "wages" were paid is NEVER sufficient in-and-of-itself, no matter who makes it, or how, or how it is answered (unless the answer is an acknowledgement). By the same token, a simple rebuttal, no matter how made, is ALWAYS sufficient to overcome ANY AND ALL presumptions in favor of the "information return" allegation.

Further, of course, merely establishing that amounts have been paid is NEVER sufficient to establish that those amounts constitute "wages" or "income" NO MATTER WHAT ELSE MAY BE TRUE OR PRESUMED TRUE-- for precisely the same reasons. Any amount paid even under circumstances in which payments otherwise COULD qualify as "wages" or "income" doesn't necessarily qualify as such, never does "as a matter of law", and again, a simple rebuttal, no matter how made, is ALWAYS sufficient to overcome ANY AND ALL presumptions in favor of the "information return" allegation.

Further still, these statutory provisions and their regulatory clarifications make clear that no one can be deemed an "employee" or in "employment" relative to the tax "as a matter of law" just because he or she works for someone else, NO MATTER WHAT ELSE MAY BE TRUE OR PRESUMED TRUE. As the regulations cited above plainly say, whether one's activities qualify as those of an "employee" or one in "employment" depends on WHAT THOSE ACTIVITIES ARE, not on the mere fact of working for someone else, *even if other activities conducted in connection with that very same someone might qualify*.

As it says in the example given in § 31.3121(b)-4, the "excepted services" are "excepted from employment"-- that is, the performance of those services do not constitute "employment as defined in 26 USC 3121(b)"-- even though they DO meet the common definition of employment, and the person doing them IS in a common relationship of employee-employer with the person paying for such services. Thus, anyone NOT engaged in a specific class of activities ISN'T an "employee" or in "employment" as those terms are meant in the tax law, even though they do, in fact, work for another at the other's direction and control.

All of the foregoing reasoning is actually incorporated into the relevant law, which says, as we saw recited by the court in *Daines v. Alcatel,* above:

> *26 USC § 6201 -Assessment authority*
> *(d) Required reasonable verification of information returns*
> *In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably*

requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency ***in addition to such information return****.*

Further,

26 USC § 7491 -Burden of proof:
(a) Burden shifts where taxpayer produces credible evidence
(1) General rule
If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the ***burden of proof with respect to such issue****.*

Plainly, the additional "reasonable and probative information" that the government must produce in response to a dispute with the assertions on an "information return", or its carrying its burden of proof as to such assertions, CAN'T simply be a recitation or transcription of the same information that appears on the IR. Neither that same information transcribed onto another form (such as an IRS "account transcript") or that same information recited by a live witness, even if that live witness is the person who filled out the "information return" in the first place, meets the statutory standards.

Such a recitation or transcription ISN'T *additional information*, nor is it proof of the disputed assertion. Such a recitation or transcription is merely the same, original information that the statutes say must be ADDED TO and/or PROVEN, not just repeated. The statutes don't say that the Secretary shall "prove that such assertions were made", they say that what is asserted must be proven, and by other evidence.

Further still, the measure of "reasonable" in 6201(d)'s "reasonable dispute" specification, and "credible" in the similar language of 7491(a) *isn't* how the dispute or evidence strikes a judge's fancy prior to an evidentiary hearing.

"Reasonable" in that context means "constructed and presented in a way specified by protocols"-- that is, on the designated forms and without self-contradiction or other invalidating flaws; "credible" is explained well here:

> "Credible evidence [under 7491(a)] is the quality of evidence which … **the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted** (without regard to the judicial presumption of IRS correctness)."
> H. Conf. Rept. 105-599, at 240-241 (1998), 1998-3 C.B. 747, 994-995 (emphasis added)

(Also see *Mason v. Barnhart*, 406 F.3d 962 (8th Cir., 2005); *Rendall v. CIR*, 535 F.3d 1221 (10th Circ., 2008) and cases cited; and *Perez v. CIR*, T.C. Summary Opinion 2009-94.)

At bottom, an “information return” is never more than a collection of allegations requiring additional fact evidence to support them, unless acknowledged either affirmatively or by default. Nothing on them can be taken as true “as a matter of law”-- no matter who produces them, or about whom they are produced, and nothing on them becomes true “as a matter of law” no matter how they are

rebutted. Every single thing on them, or about which they report, is capable of being completely wrong, or done in error (such as withholding), no matter what else is actually true or presumed true.

So, when tax agencies rely exclusively on “information returns” (or the allegations made thereon, even if repeated by whoever made them in the first place), they are NOT doing so because there is some hidden or unstated presumption being invoked to give substance to those allegations, or to undermine or contradict any rebuttal that has been made. They are doing it in the simple hope that you won’t know what I have just pointed out-- either because you’ve never looked at the law, don’t understand the rules of evidence, or have been taken in by one of the distracting notions about SSNs, citizenship and residency, the use of certain forms, and so forth that are constantly being injected into the community.

(Click here to see what must be proven by the additional fact evidence which could distinguish ordinary pay into tax-relevant "wages".)

“Don’t pay any attention to Joe back there...
He’s just... uh... cleaning up the office...
You pay attention to me!
This ‘Cracking the Code’ book is nothing but
FALSE and FRIVOLOUS nonsense!”