No. 25-10427

In the United States Court of Appeals
For the Eleventh Circuit

Brian D. Swanson

Petitioner – Appellant,

v.

Commissioner of Internal Revenue

Respondent – Appellee.

ON APPEAL FROM THE UNITED STATES TAX COURT

THE HONORABLE ALINA I. MARSHALL

APPELLANT'S OPENING BRIEF

Brian D. Swanson
swansons6@hotmail.com

CERTIFICATE OF INTERESTED PARTIES

Bran D. Swanson v. Commissioner of Internal Revenue, Case No. 25-10427

Pursuant to 11th Circuit Rule 26.1-1, Appellant Brian D. Swanson furnishes a complete list of the following:

1. Marjorie A. Robinson, Chief Counsel, Internal Revenue Service
2. Clifford E. Howie, Attorney, Internal Revenue Service
3. Honorable Alina I. Marshall, Judge United States Tax Court

STATEMENT REGARDING ORAL ARGUMENT

The Commissioner of Internal Revenue has been collecting income taxes incorrectly for as long as Appellant has been paying income taxes and correcting this error will forever change how income tax is collected and therefore, an oral argument is justified.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decisions of the Tax Court as provided in 26 U.S.C. § 7482. Appellant filed a timely notice of appeal in accordance with Fed. Rule App. Proc 13(a)(1)(A).

STATEMENT OF THE ISSUES

This appeal presents these distinct legal questions:

(i) Does the Commissioner's instruction to use box 1 of a Form W-2 to compute income tax violate the Tax Code and does this error invalidate the Notice of Deficiency?

(ii) Is it a violation of due process to require the employee to swear to the accuracy of the employer's computations under penalty of perjury?

(iii) Does the employer have the power to bind the employee to an income tax liability?

(iv) Does the Uniformity Clause of the Constitution apply to income taxes?

(v) Did Puerto Rico become an incorporated Territory on July 3, 1952 and has it become fully subject to the Uniformity Clause when collecting income taxes?

STATEMENT OF THE CASE

Procedural History

The Appellant filed his petition on May 8, 2022 (Doc 1). Case was submitted for decision without trial according Tax Court Rule 122. Opinion was served November 12, 2024. (Doc 36) Order and Decision was entered on November 14, 2024 (Doc. 37). Appellant filed a Notice of Appeal on February 7, 2025 (Doc 40).

Statement of the Facts

The following facts are submitted in support of this appeal:

1. At the time of filing of his 2018 income tax return, Appellant was a resident of Evans, Ga.

2. During the taxable year 2018, Appellant was employed by the McDuffie County Board of Education as a high school teacher and received a salary in the amount of $85,046.29.

3. Appellant filed a timely Form 1040, U.S. Individual Income Tax Return, for the 2018 taxable year, claiming a refund of $7,611.35.

4. Appellant received an IRS Notice of Deficiency dated February 9, 2022 showing a deficiency of $16,690.00.

5. The deficiency was computed using $79,186.38 as determined in Subtitle C.

6. The Tax Court affirmed the deficiency of $16,690.00 that was computed using income in the amount of $79,186.38 on November 12, 2024 and imposed a $25,000 I.R.C. 6673 sanction.

7. Appellant filed a timely Notice of Appeal on February 7, 2025.

Standard of Review

For questions of law, review is *de novo*, *Collier v. Trupin,* 177 F.3d 1184, 1193 (11th Cir. 1999). The Appeals Court owes no deference to any lower court decision on questions of law. *Horton v. Zant,* 941 F.2d 1449 (11th Cir 1991).

For abuse of discretion a court, "abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or bases the decision upon findings of fact that are clearly erroneous." *Peer v. Lewis,* 606 F.3d 1306, 1311 (11th Cir. 2010)

SUMMARY OF ARGUMENT

Subtitle A is the income tax subtitle and all rules for the computation of income tax are found in Subtitle A, and nowhere else. The Commissioner of Internal Revenue used of box 1 of appellant's Form W-2, in the amount of $79,186.38, to compute the income tax deficiency in the amount of $16,690, as shown on the Notice of Deficiency, which violates the Tax Code because the deficiency was computed using income from Subtitle C, which is excluded by law from gross income.

Puerto Rico became an incorporated Territory on July 3, 1952 and is now fully subject to the Uniformity Clause when collecting the federal income tax. The misapplication of the Uniformity Clause has created a ridiculous reality in which

American Citizens who earn income in India must pay the income tax, but American Citizens who earn income in Puerto Rico do not. This absurdity must be corrected.

If the Commissioner's deficiency is incorrect as a matter of law, then the Tax Court abused its discretion when it imposed a $25,000 sanction for making frivolous arguments under I.R.C. §6673.

ARGUMENT

The Commissioner of Internal Revenue has confused the tax imposed in Subtitle A with the taxes imposed in Subtitle C and has computed Mr. Swanson's income tax deficiency using income that is excluded by law. The Commissioner's illegal computation of Mr. Swanson's income tax deficiency should be reversed.

I. The Commissioner's Instruction to Compute Income Tax Using Box 1 of a Form W-2 Violates The Tax Code.

The 2018 Form 1040 Instructions tells taxpayers to use box 1 from their Form W-2 to compute their income tax:

> Enter the total of your wages, salaries, tips, etc. If a joint return, also include your spouse's income. For most people, the amount to enter on this line should be shown in box 1 of their Form(s) W-2. [1]

[1] 2018 Form 1040 Instructions p.26, https://www.irs.gov/pub/irs-prior/i1040gi--2018.pdf

This instruction violates the Tax Code and is illegal. Box 1 of a Form W-2 is "wages" as defined in I.R.C. § 3401(a) as required by I.R.C. § 6051(a)(3). This statue defines statutory "wages" for purposes of determining the employer's chapter 24 employment tax liability. This statute takes Mr. Swanson's real-world wages of $85,046.29 (Doc B) and applies the exclusions and pre-tax deductions applicable to chapter 24 to determine that $79,186.38 is subject to the chapter 24 employment tax. (Doc C) The chapter 24 exclusions and pre-tax deductions are not equivalent to the income tax exclusions and pre-tax deductions in chapter 1. This statutory income is excluded by law from gross income in accordance with 26 C.F.R. 1.61-1.

I.R.C. § 61(a) excludes statutory "wages," as defined in § 3401(a), from gross income by law. This statute reads,

> "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived including (but not limited to) the following items:"

The Commissioner focuses on the broad language "gross income means all income from whatever source derived," but ignores the limitation, "Except as otherwise provided in this subtitle." Gross income means all income derived from any source defined exclusively within Subtitle A and excludes all income derived from sources defined outside of Subtitle A. The Tax Code contains other subtitles that define income for purposes of other taxes, but the meaning of gross income for purposes of income tax must be determined exclusively in Subtitle A. Subtitle A is

the income tax subtitle and the rules for computing income tax are found in Subtitle A and nowhere else. This fact should be self-evident. This means that:

- Subtitle B statutes cannot determine the meaning of gross income.
- Subtitle C statutes cannot determine the meaning of gross income.
- Subtitle D statutes cannot determine the meaning of gross income.
- Subtitle E statutes cannot determine the meaning of gross income.
- Subtitle G statutes cannot determine the meaning of gross income.
- Subtitle H statutes cannot determine the meaning of gross income.
- Subtitle I statutes cannot determine the meaning of gross income.
- Subtitle J statutes cannot determine the meaning of gross income.
- Subtitle K statutes cannot determine the meaning of gross income.

This statute applies the simple legal and logical framework of P and *not* P: Subtitle A or *not* Subtitle A. All income derived from statutes in Subtitle A is included in gross income, but all income derived from *not* Subtitle A is excluded from gross income. Statutes in Subtitle C are *not* Subtitle A and are excluded from gross income. The interpretation of taxing statues requires strict construction and the fact that box 1 is determined outside of Subtitle A forbids this dollar figure to compute income tax simply because the law says so, regardless of arguments to the contrary. *Gould v. Gould 245 U.S. 151, 153* (1917) ("In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the

clear import of the language used …. In case of doubt, they are construed most strongly against the government and in favor of the citizen.") The clear import of §61(a) excludes income from Subtitle C and thus, the Commissioner's use of box 1 from a Form W-2 in the amount of $79,186.38 to compute Mr. Swanson's income tax deficiency is a violation of the Tax Code because it is determined in Subtitle C. This IRS procedure violates the law and is an illegal administrative procedure, which invalidates the Notice of Deficiency.

The Commissioner's instruction to report box 1 of a Form W-2 also violates I.R.C. §3401(a) because the first nine words of this statute read, "For purposes of this chapter, the term 'wages' means" and this statutory language limits the operation of these "wages" to chapter 24. The dollar figure $79,186.38 is created in chapter 24 using the exclusions and deductions applicable to chapter 24. These "wages" have no legal force or meaning for purposes of chapter 1. It is illegal to use chapter 24 "wages" to compute income tax in chapter 1.

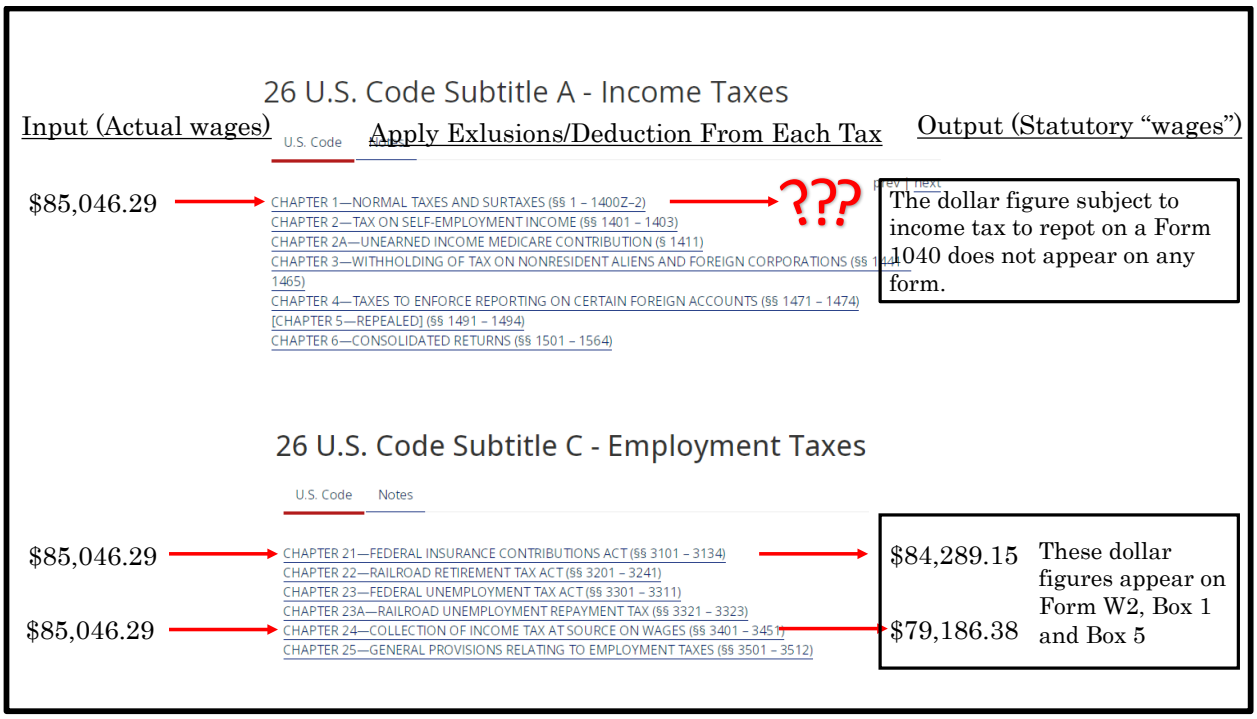
Subchapter B titled "Computation of Taxable Income" tells us that the rules for computing taxable income for the purpose of income tax are found between I.R.C. §§61 – 291. The exclusions and pre-tax deductions for income tax will be found in I.R.C. §§61 – 291. The employer does not use these statues when computing its own employment tax liability in Subtitle C. The dollar value to report on line 1 of a Form 1040 will be computed using these Subtitle A statues, not the employer's Subtitle C

statues. I.R.C. § 3401(a) is not included in this narrow statutory range and this statute is not used in the computation of taxable income. Using §3401(a) "wages" to compute income tax applies the employer's Subtitle C exclusions and pre-tax deductions to Mr. Swanson's salary of $85,046.29 instead of the Subtitle A exclusions and pre-tax deductions and this error violates the Tax Code.

The statutory income reported to the Commissioner by Mr. Swanson's employer on a Form W-2 and found on the IRS Wage And Income Transcript comes from Subtitle C and is used by the employer to prove that it satisfied its Subtitle C tax liabilities. These dollar figures are not relevant to Mr. Swanson's Subtitle A tax liability and the Commissioner has the burden to prove otherwise under I.R.C. §7491. Mr. Swanson's final December 2018 Earnings Statement shows that he earned $85,046.29 in 2018, but the Form W-2 shows that only $79,186.38 of his earning are subject to the employer's chapter 24 employment tax (Box 1) and only $84,289.15 is subject to the employer's chapter 21employment tax. (Box 5) The W-2 does not report how much of his $85,046.29 salary is subject to the chapter 1 income tax because the employer is not liable for the employee's income tax and is not authorized to compute it. It is illegal to use any of this statutory income in chapter 1 to compute Mr. Swanson's income tax. While it is correct for the employer to reduce Mr. Swanson's real-world wages from $85,046.29 to $79,186.39 when computing the chapter 24 employment tax, it is illegal for the Commissioner to use

$79,186.39 to compute Mr. Swanson's chapter 1 income tax deficiency of $16,690 as shown on the Notice of Deficiency. The W-2 is being misused to convert an employment tax liability in Subtitle C into an income tax liability in Subtitle A. The Tax Court and the Commissioner are confusing the two different taxes and the use of W-2 information as evidence of an income tax liability is a violation of the Tax Code, §61(a), §3401(a) and §7491, and is illegal.

The starting point for each tax is the actual wage paid by Mr. Swanson's employer in the amount of $85,046.29. Each tax applies its own unique exclusions and pre-tax deductions to determine an amount that is actually taxed. For income tax, the exclusions and pre-tax deductions are found in Subtitle A. For employment tax, the exclusions and pre-tax deductions are found in Subtitle C. However, the Commissioner uses §3401(a) "wages" to compute income tax applies Subtitle C exclusions and pre-tax deductions to Mr. Swanson's salary instead of the Subtitle A exclusions and pre-tax deductions. This is an error. For visual learners, the following chart is provided. The dollar figure to report on a Form 1040 must come from Subtitle A, but nobody has ever computed it correctly:



Mr. Swanson's earnings in the amount of $85,046.29 are subject to income tax according to the income tax statues in Subtitle A, not the employment tax Statutes in Subtitle C because they are excluded by law from gross income. Statutory "wages" from Subtitle C cannot be used to compute income tax in Subtitle A. The IRS is confusing the income tax provisions of Subtitle A with the Employment Tax provisions of Subtitle C and is using the wrong income to compute the income tax. Subtitle A is the income tax subtitle, not Subtitle C.

The Commissioner's instruction to use box 1 of a Form W-2 on line 1 of the Form 1040 to compute income tax violates the Tax Code, §61(a), §3401(a), and §§61-291inclusive, and is illegal. The Commissioner's use of statutory "wages" from Subtitle C in the amount of $79,186.39 to compute Mr. Swanson's income tax

deficiency violates the Tax Code and is illegal. Without any statutory authority to use box 1 to compute an income tax liability, the Commissioner's assessment is arbitrary and capricious, and the assessment is invalid. *Helvering v. Taylor, 293 U.S. 507* (1935)("Where a taxpayer shows before the Board of Tax Appeals that a tax is arbitrarily assessed and excessive, his relief from payment of it is not conditional upon his showing also the correct amount of tax or that none was assessable.") It would seem that the Commissioner's illegal instruction is an attempt to trick taxpayers into violating the law and prevent them from computing their taxes correctly using the statutes in Subtitle A. Perhaps they would discover that they owe less income tax when using Subtitle A statutes instead of Subtitle C statutes.

Because the Commissioner's instruction to use box 1 of a Form W-2 is illegal, nearly every collection and enforcement act by the Commissioner has also been wrong: Every penalty, every sanction, every deficiency, every prosecution, every seizure of property, and every imprisonment have been wrong. In this case, the Commissioner's use of income excluded by law to determine Mr. Swanson's income tax deficiency in the amount of $16,690.00 invalidates the Notice of Deficiency. Both the deficiency and the sanction should be reversed.

II. **The Employer Does Not Have the Power to Bind an Employee to an Income Tax Liability.**

Using box 1 of a Form W-2 to compute income tax gives the employer the power to bind the employee to an income tax liability determined by the employer. The power to bind must be explicitly stated in the statute or be mutually agreed by a meeting of the minds of both parties. *Baltimore & Ohio R. Co. v. United States, 261 U.S. 592* (1923) ("but an agreement 'implied in fact' founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding") Subtitle A does not give the employer any statutory authority to compute the employee's income tax and Mr. Swanson did not hire or contract with his employer to compute his income tax liability. As a result, Mr. Swanson cannot legally be bound to an income tax liability determined by the employer's Subtitle C employment tax calculations because he has no personal knowledge of how this number is computed and he cannot testify to its accuracy.

The employer is legally liable for the chapter 24 employment tax in accordance with I.R.C. § 3403:

> The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

According to this statue, the employer is liable to the IRS for the payment of the tax and the accuracy of the computations. The employer is not liable to any other person, including the employee, for the payment and accuracy of the chapter 24 employment tax. This statue does not make the employer liable for the employee's income tax in Subtitle A and does not authorize the employer to compute any portion of the employee's income tax liability.

Mr. Swanson is not liable for the employment tax and he has no knowledge of how his employer reduced his real-world wages from $85,046.29 to statutory "wages" of $79,186.39 for the purpose of the chapter 24 employment tax. He cannot testify to the accuracy of his employer's computation because he did not participate in determining this figure and the employer is not liable to Mr. Swanson for the accuracy of this number. Therefore, Mr. Swanson cannot use box 1 of a Form W-2 as the basis of his income tax liability and sign his Form 1040 under penalty of perjury. Mr. Swanson cannot swear to the accuracy of his employer's calculation because he did not compute it and he cannot reasonably expect it to be accurate for income tax purposes. Mr. Swanson has reasonably concluded that the employer used employment tax statutes in Subtitle C to determine $79,186.39, but did not use the income tax statutes in Subtitle A. If true, the employer's calculation is invalid for income tax purposes. Mr. Swanson will violate manifold statues if he falsely swears to the accuracy of his employer's calculation of box 1 of a Form W-2 without proper knowledge or foundation including, but not limited to: 18 U.S.C. §1001,

§1621 and 26 U.S.C. §7206. It is equally problematic for the Commissioner to coerce Mr. Swanson to falsely swear to the accuracy of his employer's calculation on Fourteenth Amendment due process and Fifth Amendment self-incrimination grounds. If the Commissioner requires that box 1 of a Form W-2 be used as the basis of the employee's income tax, then the Commissioner must also require the employer to sign the Form 1040 under penalty of perjury and swear that the employer's calculations are true and correct for purposes of income tax in chapter 1. Nobody has sworn to the accuracy of box 1 of a Form W-2 for the purpose of computing income tax and therefore, neither Mr. Swanson nor the Commissioner may use box 1 of a Form W-2 to compute an income tax liability.

The errors explained in this opening brief are the result of confusing the employment tax provisions of Subtitle C with the income tax provisions of Subtitle A. The employer's Subtitle C employment tax liability does not create a Subtitle A income tax liability for the employee. These taxes are mutually exclusive and must be computed independently of each other, because these are two different taxes with two different taxpayers. The reason that Subtitle A prohibits Subtitle C income, or income from any other subtitle, from determining the meaning of gross income is that the taxpayer who is liable for income tax is not the same taxpayer who is liable for employment tax: One person cannot determine another person's tax liability without consent and permission. The Commissioner is the author of much confusion by using IRS administrative

procedures to link these two taxes together when the Tax Code uses the statues to keep these two taxes separate from each other.[2]

The employer does not have the power to bind the employee to an income tax liability using the employer's computations as the basis for the employee's tax. The Commissioner's use of $79,186.39 from box 1 of a Form W-2 (or an IRS Wage and Income Transcripts) to compute Mr. Swanson's Subtitle A income tax deficiency is a violation of the Tax Code and is illegal. The income tax deficiency in the amount of $16,690.00 and the Tax Court's I.R.C. §6673 sanction in the amount of $25,000 should be reversed.

III. Puerto Rico Became an Incorporated Territory on July 3, 1952 and Is Subject to the Uniformity Clause of the Constitution

In the same way that the income tax provisions of Subtitle A are being confused with the employment tax provisions of Subtitle C, there is also confusion about the source of Congress' power to exempt Puerto Rico from the income tax: Does this authority originate from the Territory Clause or from Puerto Rico's status as an unincorporated Territory. Answer: The power to exempt Puerto Rico from the income

[2] The computation of the chapter 2 tax is statutorily linked to chapter 21 "wages" by §1402(d). The tax imposed in chapter 24 may be used as a credit against the tax imposed in chapter 1 by §31(a)(1), but there is no statutory link between the computation of taxable income in chapter 1 and chapter 24 "wages." The computation of the chapter 1 and the chapter 24 tax liability must be computed independently by the respective taxpayers liable for each tax.

tax originates from Puerto Rico's status as an incorporated Territory. *Downes v. Bidwell*, 182 U.S. 244 (1901) ("The inquiry is stated to be: "Had Porto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?" And, the answer being given that it had not, it is held that the rule of uniformity was not applicable.") If Puerto Rico became an incorporated Territory on July 3, 1952 as argued by Appellant, then the rule of uniformity is applicable and exempting American Citizens who live in Puerto Rico's from the income tax under I.R.C. §933 is unconstitutional.

The Territory Clause of the Constitution has been cited as an authority for the differing tax policies in the Territories. *United States v. Vaello Madero,* 596 U.S. ___ (2022) The Territory Clause grants to Congress the power to make "needful rules"[3] for the Territories, but it does not amend or alter Congress' powers of taxation. It is not *needful* to violate the Uniformity Clause. The High Court also explained in *Loughborough v. Blake 18 U.S. 317* (1820) that the rule of uniformity applies in the territories as well as in the states:

> The power then to lay and collect duties, imposts, and excises may be exercised and must be exercised throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of states and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or

[3] U.S. Constitution Art 4 § 3

> Pennsylvania, and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other.

If *Loughborough v. Blake* (1820) and *United States v. Vaello Madero,* 596 U.S. ___ (2022) seen to contradict each other then another layer of confusion is added to the incomprehensible Tax Code. According to *Loughborough v. Blake* (1820) the rule of uniformity is supposed to operate equally in both the territories as well as the states and so the Territory Clause does not permit the Uniformity Clause to be violated. However, the theory of "unincorporated" Territories has permitted the unconstitutional violation of the Uniformity Clause when collecting the federal income tax. This theory no longer applies to Puerto Rico because it is now an "incorporated" Territory.

Mr. Swanson relies in good faith on the written opinion of the Supreme Court when he asserts that the Uniformity Clause is applicable to income taxes. Mr. Swanson believes that the High Court has affirmed this numerous times with the most recent holding being found in *Moore et ux v. United States 602 U.S.* ___ (2024); the holding is reproduced here at length:

> Held: The MRT—which attributes the realized and undistributed income of an American-controlled foreign corporation to the entity's American shareholders, and then taxes the American shareholders on their portions of that income—does not exceed Congress's constitutional authority. Pp. 5–24.
>
> (a) Article I of the Constitution affords Congress broad power to lay and collect taxes. That power includes direct

> taxes—those imposed on persons or property—and indirect taxes—those imposed on activities or transactions. Direct taxes must be apportioned among the States according to each State's population, **while indirect taxes are permitted without apportionment but must "be uniform throughout the United States," §8, cl. 1. *Taxes on income are indirect taxes*, and the Sixteenth Amendment confirms that taxes on income need not be apportioned. Pp. 5–7.**
>
> **(Emphasis added)**

Taxes on income are indirect taxes and "must 'be uniform throughout the United States.'" This Court has twice upheld sanctions on Mr. Swanson using the reasoning: "First, it is not clear that the Uniformity Clause applies to income taxes." *See Swanson III, 2023 WL 5605738 at *2* If this Court does not have a precedent regarding the applicability of the Uniformity Clause to income taxes, it would seem appropriate that this Court should rule on this question before imposing sanctions upon the litigant who asks it.

Puerto Rico was acquired by the United States after the Spanish-American War in 1898. The Insular Cases determined that Puerto Rico was an "unincorporated" Territory and was not fully subject to the Constitution, especially in terms of taxation and revenue collection. It was decided that acquisition by treaty does not transform conquered territory into domestic territory in the sense of the revenue laws. *Downes v Bidwell*, 182 U.S. 244 (1901) ("So long as Congress has not incorporated the territory into the United States, neither military occupation nor cession by treaty makes the conquered territory domestic territory in the sense of the revenue laws.")

Circumstances have changed since 1901. The people of Puerto Rico acquired U.S. Citizenship in 1917 [4] and Congress officially approved Puerto Rico's constitution on July 3, 1952.[5] Incorporating a territory must be an official act, *Balzac v. Porto Rico, 258 U.S. 298* (1922) ("in these latter days, incorporation is not to be assumed without express declaration or an implication so strong as to exclude any other view") and appellant believes that Congress has acted officially. Congressional approval of Puerto Rico's constitution represents either an express declaration or an implication too strong to ignore. On July 3, 1952, Congress expressly declared that Puerto Rico's treaty relationship with the United States had ended and its constitutional relationship had begun. With an approved constitution, Puerto Rico became an integral part of our constitutional system and became domestic territory in the sense of the revenue laws and as such, the rule of uniformity is now applicable. Puerto Rico became fully subject to the Uniformity Clause when collecting the federal income tax on July 3, 1952.

Additionally, Puerto Rico is on the path to statehood and an "incorporated" Territory is one that is "surely destined for statehood." *Boumedienne v. Bush*, 553 U.S. 244 (2008). This means that an unincorporated Territory cannot become a state.

[4] Public Law 64-368, 39 Stat. 951; Section 5
[5] Public Law 82-447, 66 Stat. 327

Puerto Rico's most recent petition for statehood was H.R. 1522 in 2021.[6] Section 2, paragraph 20 of H.R. 1522 states:

> No large and populous United States territory inhabited by American citizens that has petitioned for statehood has been denied admission into the Union.

This appears to be a statement of destiny. Puerto Rico will not be denied statehood. Thus far, the bills may have died in committee, but it is only a matter of time until statehood is approved. Considering statehood for Puerto Rico is another congressional act that strongly implies that Puerto Rico has crossed the threshold to become an incorporated Territory because an unincorporated Territory is not eligible for statehood.

The uniform application of federal tax law is a fundamental constitutional guarantee that protects all American Citizens. The Uniformity Clause ensures that some Americans are not forced to pay a federal tax from which other Americans are exempt based on geographical location within the United States. The incorporation theory includes the idea that certain constitutional protections are fundamental and apply to all American Citizens even in distant unincorporated Territories. *Dorr v. United States*195 U.S. 138, 148-149 (1904). Creating a tax haven in Puerto Rico to which American Citizens may flee to avoid the federal income tax violates this fundamental constitutional guarantee by increasing the income tax burden on the

[6] HR 1522, Puerto Rico Statehood Admission Act (03/02/2021)

remaining federal taxpayers. Even if Puerto Rico has not become an incorporated Territory, as argued by appellant, then he believes that the uniform application of federal tax law is sufficiently fundamental to apply in unincorporated Puerto Rico. In this regard, the Insular Cases are flawed and should be overruled.

The embarrassing state of current affairs is illustrated by the fact that the income tax is collected on income earned in India, but it is not collected on income earned in Puerto Rico. The income tax is subject to the Constitution's Uniformity Clause according to *Moore et ux v.* United States (2024) ("indirect taxes are permitted without apportionment but must "be uniform throughout the United States," §8, cl. 1. Taxes on income are indirect taxes") and the Uniformity Clause requires geographical uniformity throughout the United States. *Knowlton v. Moore, 178 U.S. 41* (1900) ("The provision in Section 8 of Article I of the Constitution that "all duties, imports and excises shall be uniform throughout the United States" refers purely to a geographical uniformity, and is synonymous with the expression 'to operate generally throughout the United States.'") We are told that an unincorporated Territory is not an integral part of the United States and therefore the Uniformity Clause does not apply. *Downes v. Bidwell, 189 U.S. 244* (1901) ("We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution") *also* ("The inquiry is stated to be: "Had Porto Rico, at the time of

the passage of the act in question, been incorporated into and become an integral part of the United States?" And, the answer being given that it had not, it is held that the rule of uniformity was not applicable.") Is India a more integral part of the United States than unincorporated Puerto Rico? We are asked to believe that an income tax limited by the rule of uniformity can be collected from American Citizens who earn income in India but cannot be collected from American Citizens who earn income in Puerto Rico. The Uniformity Clause is both a requirement and a limitation: taxes are ***required*** to operate with geographical uniformly throughout the United States and taxes are ***limited*** to the geographical United States. The Moore's should have argued that undistributed income accumulated in India is constitutionally excluded from the income tax by the rule of uniformity which limits the collection of the income tax to the geographical United States. After Congress approved Puerto Rico's constitution, the geographical United States includes Puerto Rico, but it does not include India or any other foreign country. Whether an income tax is ***apportioned among the several states***[7] or is ***uniform throughout the United States,***[8] neither of these rules permit an income tax to operate in a foreign country.[9] Therefore, the income tax must be collected on income earned in Puerto Rico but the income tax

[7] U.S. Constitution Art I. §9 cl. 4; Art I. §2 cl. 3

[8] U.S. Constitution Art I. §8 cl. 1

[9] The attempt to collect income tax "without the United States" is implemented by regulation that exceeds the authority of the statute. I.R.C. §1 makes no attempt to collect the tax "without the United States," but this language is added to 26 C.F.R. 1.1-1(b) which attempts to expand Congress' taxing power to foreign countries in violation of the Constitution. Not even the defunct Chevron Defense would permit such an egregious overreach.

cannot be collected on income earned in India. The Commissioner is collecting the income tax in foreign countries using the power of an unconstitutional administrative regulation. The misapplication of the Uniformity Clause is causing much confusion, error and injury. This embarrassing state of affairs should be corrected and *pro se* litigants should not be sanctioned for attempting to correct errors that others have overlooked.

It is unfair that public schoolteachers in Georgia must pay the income tax while public schoolteachers in Puerto Rico do not. It is unfair that American citizens can flee to Puerto Rico to evade their responsibility to pay the income tax. It is more than unfair - it is unconstitutional: All American citizens must be taxed uniformly when collecting income taxes according to *Moore*. In *Vaello Madero,* Justice Gorsuch laments that, "Because no party asks us to overrule the Insular Cases to resolve today's dispute, I join the Court's opinion." However, appellant does ask for the Insular Cases to be overruled, or for Puerto Rico's incorporation to be recognized, and for it to be acknowledged that Puerto Rico is fully subject to the Constitution's Uniformity Clause when collecting the federal income Tax. This means that American citizens in Georgia cannot be forced to pay more income tax than American citizens in Puerto Rico based on geographical location. It also means that the people of Puerto Rico should be paying federal income tax and they should be receiving their SSI benefits.

The tax imposed by 26 U.S.C. § 1 is not geographically uniform throughout the United States and therefore the tax is void and must be corrected.

IV. **Not Liable for an I.R.C. § 6673 Sanction**

Mr. Swanson has the burden to prove that an error exists in the Commissioner's Notice of Deficiency. *Welch v. Helvering, 290 U.S. 111, 115* (1933) (Tax Court Rule 142(a)) The correctness of the Commissioner's NOD is at issue in this case, and Mr. Swanson has successfully challenged the Notice's presumption of correctness by proving that an error exists. Therefore, Mr. Swanson is not liable for an I.R.C. § 6673 sanction.

The Commissioner has been instructing taxpayers to compute income tax by using box 1 of their Form W-2s[10] for as long as Mr. Swanson has been paying income taxes. This instruction is a violation of the Tax Code and is illegal. The Commissioner did not correctly compute income tax using Subtitle A and he does not know how to correctly compute the tax. It would seem that the Tax Code is so confusing and so ambiguous that the Commissioner does not know how to correctly administer it. All of Mr. Swanson's errors in computing his tax liability and in litigating his arguments can be traced to the Commissioner's illegal instructions and

[10] 2018 Form 1040 Instructions p.26, https://www.irs.gov/pub/irs-prior/i1040gi--2018.pdf

erroneous calculations. The Commissioner's errors alone should invalidate Mr. Swanson's sanction.

Tax Court imposed its $25,000 sanction "in the hopes that petitioner will in fact think and conform his conduct to settled principles going forward." (Doc 36 at 7) It appears that these settled principles are a violation of the Tax Code and are illegal. Rather than conform to illegal principles, it would be better to continue the struggle to bring the Commissioner's illegal administrative procedures into harmony with the law and the Constitution.

Mr. Swanson's argument in this case is that Subtitle C income cannot be used arbitrarily to compute income tax in Subtitle A and that the tax must be collected in Puerto Rico, but not in India. The Commissioner's use of box 1 of a Form W-2 to compute the income tax deficiency is illegal and therefore, Mr. Swanson should not be liable for a $25,000 I.R.C. §6673 sanction. This sanction should be reversed.

CONCLUSION

The Tax Code is so confusing and so incomprehensible that the Commissioner is collecting the income tax perfectly backwards. First, he collects the tax in India but not in Puerto Rico and second, he confuses the Subtitle C taxes with the Subtitle A taxes and computes the income tax using illegal income, which invalidates the Notice of Deficiency. This Court should not overlook the Commissioner's brazenly

absurd blunder of using the wrong income to compute the tax because this obvious error of law is so clear that even a caveman and a *pro se* litigant can see it. Unfortunately for Mr. Swanson, he will likely receive another sanction for the offense of exposing the Commissioner's errors, but it is written: *in this life you will have tribulation and blessed are those who are persecuted for the truth.* Perhaps, after a few more sanctions, the truth will finally break free. It can be hoped that, in the new political climate, the revelations of the government's errors will be received more favorably than in times past and a proper solution will be adopted.

For the foregoing reasons, the deficiency as shown in the Notice of Deficiency in the amount of $16,690 and the I.R.C. §6673 sanction in the amount of $25,000 should be reversed.

Dated: February 18, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This is to certify that this petition complies with Federal Rule of Appellate Procedure 32(a)(7)(b)(i). This petition is submitted in 14-point Times New Roman font, and it contains 6,148 words.

CERTIFICATE OF SERVICE

I Hereby certify that on this 18th day of February, 2025, a copy of this brief was served on the following individuals by United States Postal Service:

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