

1  
2  
3  
4  
5  
6  
7

**ENTERED**  
MAY 26 2005  
CLERK, U.S. DISTRICT COURT/  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION  
BY DEPUTY

Priority   
Send   
Enter   
Closed   
JS-5/JS-8   
JS-2/JS-3   
Scan Only

FILED  
CLERK U.S. DISTRICT COURT  
MAY 25 2005  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION BY DEPUTY

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(D).

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

JOHN GARY GIVEN, MICHELE LOUISE GIVEN,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

ED CV 04-75-RT(Mcx)  
JUDGMENT

On May 24, 2005, the Court ordered Defendant United States of America (“United States”)’s Motion for Summary Judgment be granted as to Plaintiffs John Gary Given and Michele Louise Given’s Complaint;

Accordingly, IT IS ORDERED AND ADJUDGED that (1) judgment be entered in favor of the Defendant United States on all claims in Plaintiffs John Gary Given and Michele Louise Given’s Complaint; (2) Plaintiffs John Gary Given and Michele Louise Given take nothing against Defendant United States in this action; and, (3) Defendant United States recover its costs against Plaintiffs John Gary Givens and Michele Louise Given in the amount of \$ \_\_\_\_\_.

DATED: May 25, 2005

DOCKETED ON CM  
MAY 26 2005  
045

*Robert J. Timlin*  
ROBERT J. TIMLIN  
United States District Judge  
(24)

Priority    
 Send    
 Enter    
 Closed    
 JS-5/JS-6    
 JS-2/JS-3    
 Scan Only

FILED  
 CLERK U.S. DISTRICT COURT  
 MAY 24 2005  
 CENTRAL DISTRICT OF CALIFORNIA  
 EASTERN DIVISION BY DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

JOHN GARY GIVEN and MICHELE LOUISE ) CASE NO. ED CV 04-00075 RT (MCx)  
 GIVEN, )  
 Plaintiffs, ) ORDER GRANTING DEFENDANT  
 v. ) UNITED STATES OF AMERICA'S  
 ) MOTION FOR SUMMARY  
 UNITED STATES OF AMERICA, ) JUDGMENT PURSUANT TO  
 ) FEDERAL RULES OF CIVIL  
 Defendant. ) PROCEDURE, RULE 56.

The court, Judge Robert J. Timlin, has read and considered defendant United States of America ("United States")' motion for summary judgement pursuant to Federal Rules of Civil Procedure, Rule 56 ("Rule 56"), plaintiffs John Gary Given and Michele Louise Given (collectively, "Plaintiffs")' "Response Opposing Motion for Summary Judgement" and statement of genuine issues of material fact, and the United States' reply. Based on such consideration, the court concludes as follows:

I.  
BACKGROUND<sup>1</sup>

During the taxable years 1997, 1998, and 1999, Plaintiffs had the following <sup>DV</sup>respective amounts withheld as income tax paid on their wage income: [REDACTED], and [REDACTED]. For the taxable years 1997, 1998, and 1999, Plaintiffs filed Amended U.S. Individual

DOCKETED ON CM  
 MAY 25 2005  
 045

<sup>1</sup>The facts contained in this background are uncontroverted material facts supported by admissible evidence.

98

1 Tax Returns ("Amended Returns"). On the Amended Returns, Plaintiffs indicated that "Wages  
2 not subject to income tax per attachment A." Attachment A was a Ruling for Determination  
3 Letter submitted to the Internal Revenue Service ("IRS") which stated the basis for Plaintiffs'  
4 contention that wages are not subject to income tax. IRS assessed a frivolous return penalty of  
5 \$500.00 on each of the Amended Returns filed by Plaintiffs.

6 On January 21, 2005, Plaintiffs filed a complaint in this court. Plaintiffs allege wages  
7 received for personal services are not income, seek to extinguish the frivolous tax penalties  
8 assessed by the IRS, and seek refund of the taxes paid for calendar years 1997, 1998, and 1999  
9 pursuant to 26 U.S.C. 7422(a). The United States now moves the court for summary judgment  
10 pursuant to Rule 56.

## 11 II.

### 12 ANALYSIS

#### 13 A. Legal Standard Governing Motion For Summary Judgment

14 Under Federal Rules of Civil Procedure, Rule 56(c) ("Rule 56(c)"), a district court may  
15 grant summary judgment where "the pleadings, depositions, answers to interrogatories, and  
16 admissions on file, together with affidavits, if any, show that there is no genuine issue as to any  
17 material fact and that the moving party is entitled to judgment as a matter of law."

18 The Supreme Court and the Ninth Circuit have established the following standards for  
19 consideration of such motions: "If the party moving for summary judgment meets its initial  
20 burden of identifying for the court those portions of the materials on file that it believes  
21 demonstrates the absence of any genuine issue of material fact," the burden of production then  
22 shifts so that "the nonmoving party must set forth, by affidavit or as otherwise provided in Rule  
23 56, 'specific facts showing that there is a genuine issue for trial.'" T.W. Elec. Serv., Inc. v.  
24 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (citations omitted). With  
25 respect to these specific facts offered by the non-moving party, the court does not make  
26 credibility determinations or weigh conflicting evidence, and is required to draw all inferences in  
27 a light most favorable to the non-moving party. See id. at 630-31 (citations omitted).

28 Rule 56(c) nevertheless requires this court to enter summary judgment, "after adequate

1 time for discovery and upon motion, against a party who fails to make a showing sufficient to  
2 establish the existence of an element essential to that party's case, and on which that party will  
3 bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The mere  
4 existence of a scintilla of evidence in support of the non-moving party's position is insufficient:  
5 "[T]here must be evidence on which the jury could reasonably find for the [non-moving party]."  
6 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). This court thus applies to either  
7 party's motion for summary judgment the same standard as that for a motion for a directed  
8 verdict: "[W]hether the evidence presents a sufficient disagreement to require submission to a  
9 jury or whether it is so one-sided that one party must prevail as a matter of law." T.W. Elec.  
10 Serv., 809 F.2d at 630.

11 **B. United States' Motion<sup>2</sup>**

12 **1. Wages**

13 The United States contends that Plaintiffs' contentions are specious and that the case law  
14 is both abundant and unequivocal in its renunciation of the principle that wages earned from  
15 personal services are not income. The court agrees. It is well established that wages are taxable  
16 income. See Maisano v. United States, 908 F.2d 408, 409 (9th Cir. 1990); Wilcox v.  
17 Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988) (stating that wages are taxable income);  
18 Stubbs v. Commissioner, 797 F.2d 936, 938 (11th Cir. 1986) (stating that argument alleging that  
19 wages are not taxable income has been rejected by courts at all levels of the judiciary"); Olson v.  
20 United States, 760 F.2d 1003, 1005 (9th Cir. 1985) ("This court has repeatedly rejected the  
21 argument that wages are not income."); see also Johnson v. United States, 291 F. Supp. 2d 1163,  
22 1165 (E.D. Cal. 2003). Plaintiffs' opposition submits no law or fact disputing this principle.  
23 Therefore, because Plaintiffs fail to articulate a valid legal basis for their claim that wages are not  
24 income, the court concludes as a matter of law that the United States is entitled to judgment in its

---

25  
26 <sup>2</sup>Plaintiffs argue that the United States refused to conference pursuant to Federal  
27 Rules of Civil Procedure, Rule 16-10 ("Rule 16-10"). Central District of California Local  
28 Rule 16-11 exempts defendants from the requirements of Rule 16 where the plaintiff is  
appearing pro se and is not an attorney. Therefore, Plaintiffs' argument is without merit.

1 favor and against Plaintiffs on this claim and the court will grant the United States' motion for  
2 summary judgment on this claim.

3 **2. Frivolous Tax Assessment**

4 The United States contends that the IRS properly assessed a frivolous return penalty on  
5 each of the Amended Returns submitted by Plaintiffs for tax years 1997, 1998, and 1999 based  
6 on their frivolous position that wages are not income. The Ninth Circuit has repeatedly stated  
7 that the position that wages are not income is frivolous. See Olson, 760 F.2d at 1005 ("This  
8 court has repeatedly rejected the argument that wages are not income as frivolous."); see also  
9 Maisano, 908 F.2d at 409 (stating that plaintiff's argument is "simply a variation on the 'wages  
10 are not income' argument which we repeatedly have rejected as frivolous"); Stubbs, 797 F.2d at  
11 938 (stating that the argument alleging that wages are not taxable income "patently frivolous").  
12 Moreover, frivolous tax penalties apply to all tax returns, including amended returns. Colton v.  
13 Gibbs, 902 F.2d 1462, 1464 (9th Cir. 1990). Plaintiffs' opposition submits no law or fact  
14 disputing these principles. Therefore, because Plaintiffs fail to set forth a valid legal basis for  
15 their contention that their position that wages are not income is not frivolous, the court will grant  
16 the United States' motion for summary judgement on this claim.

17 **III.**

18 **DISPOSITION**

19 ACCORDINGLY, IT IS ORDERED:

20 Defendant United States' motion for summary judgement pursuant to Federal Rules of  
21 Civil Procedure, Rule 56 is GRANTED.

22  
23 5/24/05  
24 DATE

22  
23   
24 JUDGE, UNITED STATES DISTRICT COURT