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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 EASTERN DIVISION

18 JOHN GARY GIVEN, MICHELE LOUISE	No. ED CV 04-00075 RT (MCx)
19 GIVEN,)
20 Plaintiff,) Date: May 23, 2005
21 v.) Time: 10:00 a.m.
22 UNITED STATES OF AMERICA,) Place: Courtroom 4, Riverside
23 Defendant.) Courthouse
24) [Exempt from Local Rule 7.4.1 -
25	26 <u>pro se</u> plaintiffs]

- 27
- 28 1. NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT;
 - 29 2. MEMORANDUM OF POINTS AND AUTHORITIES
 - 30 IN SUPPORT THEREOF;

1 NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

2 PLEASE TAKE NOTICE that on May 23, 2005, at 10:00 a.m., or as
3 soon thereafter as the matter can be heard, federal defendant
4 United States of America will bring on for hearing a motion for
5 summary judgment in the above matter before the Honorable Robert
6 J. Timlin, United States District Judge, in courtroom number 4,
7 Federal Courthouse, Riverside, California.

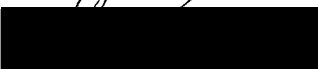
8 Defendant United States hereby moves this Court for entry of
9 summary judgment pursuant to Rule 56 of the Federal Rules of Civil
10 Procedure on the ground that there are no genuine issues of
11 material fact, and defendant is entitled to judgment as a matter
12 of law.

13 This motion is based upon the Notice of Motion and Motion,
14 the Memorandum of Points and Authorities filed herewith, the
15 attached exhibits, all pleadings on file in this case and any oral
16 argument the Court may allow at the time of hearing.

17 DATED: April 27, 2005

Respectfully submitted,

18 DEBRA W. YANG
19 United States Attorney
20 SANDRA R. BROWN
21 Assistant United States Attorney
22 Chief, Tax Division

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25 DONNA FORD
26 Assistant United States Attorneys
27 Tax Division

28 Attorneys for Defendant
 United States of America

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs John Gary Given and Michele Louise Given filed a
4 complaint in United States District Court to recover [REDACTED],
5 plus statutory interest paid as income tax for the years 1997,
6 1998 and 1999. Plaintiffs basically contend that wages received
7 for personal services are not income, and seek that the frivolous
8 tax penalties assessed by the Internal Revenue Service ("IRS") be
9 extinguished, and that they be refunded the taxes paid for the
10 above tax years. See Complaint, pages 10-11.

11 II. FACTS

12 During the taxable years 1997, 1998, and 1999, plaintiffs had
13 the following respective amounts withheld as income tax paid on
14 their wage income: [REDACTED] [REDACTED] [REDACTED]
15 Plaintiffs now request that those taxes be refunded to them.
16 Plaintiffs argue that their wages are not income because there is
17 allegedly no "net-income" resulting from such wages and thus there
18 is no "taxable income." See Complaint ¶5.

19 On a Form 1040X, Amended U.S. Individual Tax Return,
20 submitted by the plaintiffs to the IRS for each of the tax years
21 1997, 1998, and 1999, the plaintiffs typed on Line 21, "Other
22 income," the phrase: "Wages not subject to income tax per
23 attachment A." See Exhibit A.

24 The IRS assessed a frivolous return penalty¹ of \$500.00 on
25 each frivolous document (Form 1040X for Tax Years 1997, 1998, and
26 1999) filed by the plaintiffs. See Exhibit B.

27
28

1 Prior to assessing the frivolous return penalties, the IRS
gave the plaintiffs notice of the frivolousness of their claim.
See Exhibit B.

1 III. ARGUMENT

2 A. Standard of Review for Summary Judgment

3 Summary judgment is appropriate in this case because the
4 pleadings and the supporting material "show that there is no
5 genuine issue as to any material fact and that the moving party is
6 entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).
7 Tzung v. State Farm Fire and Casualty Co., 873 F.2d 1338, 1339-40
8 (9th Cir. 1989); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157,
9 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). The purpose of summary
10 judgment is to pierce the pleadings and to access the proof in
11 order to determine whether there is a genuine need for trial.
12 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
13 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Where the record taken as
14 a whole could not lead a rational trier of fact to find for the
15 non-moving party, there is no "genuine issue for trial".
16 Matsushita, 106 S.Ct. at 1356 (quoting First Nat'l Bank v. Cities
17 Serv. Co., 391 U.S. 253, 289, 88 S.Ct. 1575, 1592 (1968)).

18 Furthermore, failure to establish a prima facie case mandates
19 summary judgment for the moving defendant in this case. The
20 Supreme Court stated: The plain language of Rule 56 mandates the
21 entry of summary judgment. . .against a party who fails to make a
22 showing sufficient to establish the existence of an element
23 essential to that party's case, in which that party will bear the
24 burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317,
25 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986).

26 To the extent plaintiffs assert that the law does not provide
27 for taxation of their wages, plaintiffs have no legal grounds to
28 make that assertion. In addition, the IRS properly assessed

1 frivolous tax penalties against plaintiffs based on their
2 frivolous position that wages are not income. Plaintiffs'
3 complaint fails to set forth a valid legal basis for their claim
4 that their wages are not income pursuant to 26 U.S.C. § 61(1).
5 Therefore, judgment should be granted in favor of the United
6 States.

7 **B. Plaintiffs' Contention That Wages Received for Personal**
8 **Services Are Not Income Is Frivolous**

9 Plaintiff's basically claim that wages received for personal
10 services are not income. The courts have summarily rejected
11 claims that income does not include compensation for labor.

12 For federal income tax purposes, "gross income" means all
13 income from whatever source derived and includes compensation for
14 services. 26 U.S.C. § 61(1). Any "income from whatever source"
15 is presumed to be income under section 61, unless the taxpayer can
16 establish that it is specifically exempted or excluded. Id.² All
17 compensation for personal services, no matter what the form of
18 payment, must be included in gross income. 26 U.S.C. § 61. This
19 includes salary or wages paid in cash, as well as the value of
20 property and other economic benefits received because of services
21 performed, or to be performed in the future. 26 U.S.C. § 61(1)
22 through (15).³

23
24 2 "[A]n abiding principle of federal tax law is that, absent an
25 enumerated exception, gross income means all income from whatever
26 source derived." Reese v. United States, 24 F.3d 228, 231 (Fed.
Cir. 1994).

27 3 Criminal and civil penalties have been imposed against
28 individuals relying upon the frivolous argument that wages are
not income. Referring to the statute's words "income derived
from any source whatever," the Supreme Court stated, "this
language was used by Congress to exert in this field 'the full

1 In United States v. Romero, 640 F.2d 1014, 1016 (9th Cir.
2 1981), the Ninth Circuit Court of Appeals affirmed Romero's
3 conviction for willfully failing to file tax returns, finding, in
4 part, that "[t]he trial judge properly instructed the jury on the
5 meaning of ['income' and 'person']". Romero's proclaimed belief
6 that he was not a 'person' and that the wages he earned as a
7 carpenter were not 'income' is fatuous as well as obviously
8 incorrect." This proposition was recently affirmed by the Ninth
9 Circuit in the case of Stark v. United States of America, 2005 WL
10 924079 (9th Cir. (Cal.)) where, as in this case, the taxpayer
11 argued to Judge Lew of the Central District of California that the
12 IRS improperly assessed frivolous return penalties against her
13 because "either her self-assessment was substantially incorrect,
14 see 26 U.S.C. §6702(a)(1)(B), and/or it was premised on a position
15 which is frivolous, see 26 U.S.C. §6702(a)(2)(A)." Id. (citing
16 Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985) (per
17 curiam).

18 The case law refuting the plaintiffs' specious reasoning is
19 both abundant and unequivocal in its renunciation of the principle
20 that wages are not taxable income. Therefore, the United States

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22 measure of its taxing power.' . . . And the Court has given a
23 liberal construction to this broad phraseology in recognition of
24 the intention of Congress to tax all gains except those
25 specifically exempted." Commissioner v. Glenshaw Glass Co., 348
26 U.S. 426, 429-30, 75 S.Ct. 473, 99 L.Ed.483 (1955). The Supreme
27 Court further found that payments are considered income where the
28 payments are undeniably accessions to wealth, clearly realized,
and over which a taxpayer has complete dominion. Commissioner
v. Kowalski, 434 U.S. 77, 98 S.Ct. 315, 54 L.Ed.2d 252 (1977).
"Every court which has ever considered the issue has
unequivocally rejected the argument that wages are not income."
United States v. Connor, 898 F.2d 942, 943-44 (3rd Cir.), cert.
denied, 497 U.S. 1029 (1990).

1 seeks judgment in its favor.

2 **V. CONCLUSION**

3 For the foregoing reasons, the Court should grant summary
4 judgment in favor of the United States.

5 Respectfully submitted,

6 DATE: April 27, 2005

7 DEBRA W. YANG
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8 SANDRA R. BROWN
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