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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 EASTERN DIVISION

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

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 21 **STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW**

22 **[Proposed]**
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1 The Motion for Summary Judgment of defendant United States of
2 America came on regularly for hearing on May 23, 2005 before the
3 Honorable Robert J. Timlin, United States District Judge, and the
4 Court having considered the pleadings, evidence presented,
5 memorandum of points and authorities and the oral argument at the
6 time of the hearing, the Court makes the following findings of
7 fact and conclusions of law:

8 **I. FINDINGS OF FACT**

9 1. Plaintiffs John Gary Given and Michele Louise Given filed
10 a complaint in United States District Court to recover [REDACTED]
11 plus statutory interest paid as income tax for the years 1997,
12 1998 and 1999. Plaintiffs basically contend that wages received
13 for personal services are not income, and seek that the frivolous
14 tax penalties assessed by the Internal Revenue Service ("IRS") be
15 extinguished, and that they be refunded the taxes paid for the
16 above tax years. See Complaint, pages 10-11.

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

24 3. On a Form 1040X, Amended U.S. Individual Tax Return,
25 submitted by the plaintiffs to the IRS for each of the tax years
26 1997, 1998, and 1999, the plaintiffs typed on Line 21, "Other
27 income," the phrase: "Wages not subject to income tax per
28 attachment A." See Motion, Exhibit A.

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

4 5. To the extent that any of the following conclusions of
5 law are deemed to be uncontroverted facts, they are incorporated
6 into the statement of uncontroverted facts.

7 **II. CONCLUSIONS OF LAW**

8 1. Summary judgment is appropriate in this case because the
9 pleadings and the supporting material "show that there is no
10 genuine issue as to any material fact and that the moving party is
11 entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).
12 Tzung v. State Farm Fire and Casualty Co., 873 F.2d 1338, 1339-40
13 (9th Cir. 1989). Furthermore, plaintiff's failure to establish a
14 prima facie case mandates summary judgment for the defendant.
15 "The plain language of Rule 56 mandates the entry of summary
16 judgment. . .against a party who fails to make a showing
17 sufficient to establish the existence of an element essential to
18 that party's case, in which that party will bear the burden of
19 proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 106
20 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986).

21 2. Plaintiffs' contention that wages received for personal
22 services are not income is frivolous.

23 3. Plaintiff's basically claim that wages received for
24 personal services are not income. The courts have summarily
25 rejected claims that income does not include compensation for
26

27 1 Prior to assessing the frivolous return penalties, the IRS
28 gave the plaintiffs notice of the frivolousness of their claim.
See Motion, Exhibit B.

1 labor.

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

13 5. In United States v. Romero, 640 F.2d 1014, 1016 (9th Cir.
14 1981), the Ninth Circuit Court of Appeals affirmed Romero's

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17 2 "[A]n abiding principle of federal tax law is that, absent an
18 enumerated exception, gross income means all income from whatever
19 source derived." Reese v. United States, 24 F.3d 228, 231 (Fed.
20 Cir. 1994).

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22 3 Criminal and civil penalties have been imposed against
23 individuals relying upon the frivolous argument that wages are
24 not income. Referring to the statute's words "income derived
25 from any source whatever," the Supreme Court stated, "this
26 language was used by Congress to exert in this field 'the full
27 measure of its taxing power.' . . . And the Court has given a
28 liberal construction to this broad phraseology in recognition of
the intention of Congress to tax all gains except those
specifically exempted." Commissioner v. Glenshaw Glass Co., 348
U.S. 426, 429-30, 75 S.Ct. 473, 99 L.Ed.483 (1955). The Supreme
Court further found that payments are considered income where the
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 conviction for willfully failing to file tax returns, finding, in
2 part, that "[t]he trial judge properly instructed the jury on the
3 meaning of ['income' and 'person']". Romero's proclaimed belief
4 that he was not a 'person' and that the wages he earned as a
5 carpenter were not 'income' is fatuous as well as obviously
6 incorrect." This proposition was recently affirmed by the Ninth
7 Circuit in the case of Stark v. United States of America, 2005 WL
8 924079 (9th Cir. (Cal.)) where, as in this case, the taxpayer
9 argued to Judge Lew of the Central District of California that the
10 IRS improperly assessed frivolous return penalties against her
11 because "either her self-assessment was substantially incorrect,
12 see 26 U.S.C. §6702(a)(1)(B), and/or it was premised on a position
13 which is frivolous, see 26 U.S.C. §6702(a)(2)(A)." Id. (citing
14 Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985) (per
15 curiam).

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

20 7. Plaintiffs' papers are insufficient to meet the burden
21 with respect to summary judgment. Plaintiffs have pointed to no
22 evidence sufficient to raise a triable issue of material fact.
23 Under such circumstances the United States is entitled to
24 judgment.

25 8. There are no genuine issues of material fact in dispute
26 and the United States is entitled to judgment in its favor as a
27 matter of law.

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1 9. To the extent that any of the foregoing uncontroverted
2 facts are deemed to be conclusions of law, they are incorporated
3 into these conclusions of law.

4 DATED: This _____ day of _____, 2005

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6 ROBERT J. TIMLIN
United States District Judge

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8 Respectfully submitted,
9 DEBRA W. YANG
United States Attorney
10 SANDRA R. BROWN
Assistant United States Attorney
Chief, Tax Division

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12 _____
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14 Attorneys for Defendant
United States of America

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