# United States Tax Court

Washington, DC 20217

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| MARK BARRY ZEMANEK,<br><br>Petitioner<br><br>v.<br><br>COMMISSIONER OF INTERNAL REVENUE,<br><br>Respondent | Docket No. 8984-25. |

**ORDER**

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit with this Order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Kathleen Kerrigan at Seattle, Washington, containing her oral findings of fact and opinion rendered at the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, an appropriate Order and Decision will be entered.

**(Signed) Kathleen Kerrigan**
**Judge**

**Served 11/16/26**

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IN THE UNITED STATES TAX COURT

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| In the Matter of: | ) | |
| MARK BARRY ZEMANEK, | ) | Docket No. 8984-25 |
| Petitioner, | ) | |
| v. | ) | |
| COMMISSIONER OF INTERNAL REVENUE, | ) | |
| Respondent. | ) | |

Pages: 1 through 11

Place: Seattle, Washington

Date: November 4, 2026

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IN THE UNITED STATES TAX COURT

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| In the Matter of: | |
| MARK BARRY ZEMANEK, Petitioner, | Docket No. 8984-25 |
| v. | |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | |

Nakamura U.S. Courthouse
1010 5th Avenue
Room 4, 3rd Floor
Seattle, Washington 98104

November 4, 2026

The above-entitled matter came on for bench opinion, pursuant to notice at 9:18 a.m.

BEFORE: HONORABLE KATHLEEN KERRIGAN
Judge

APPEARANCES:

For the Petitioner
No Appearance

For the Respondent
No Appearance

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P R O C E E D I N G S

(9:18 a.m.)

THE CLERK: Now recalling docket number 8984-25, Mark Barry Zemanek.

THE COURT: We'll go off the record for a second.

(Off the record, 9:18 a.m. until 9:18 a.m.)

(Whereupon, a bench opinion was rendered.)

Bench Opinion by Judge Kathleen Kerrigan

November 4, 2026

Mark Barry Zemanek v. Commissioner of Internal Revenue

Docket No. 8984-25

THE COURT: The Court has decided to render oral findings of fact and opinion in this case and the following represents the Court's oral findings of facts and opinion. The oral findings of facts and opinion shall not be relied upon as precedent in any other case. The oral findings of facts and opinion are made pursuant to the authority granted by section 7459(b) of the Internal Revenue Code and Tax Court Rule 152. Rule references in this opinion are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code, in effect at all relevant times. All monetary amounts are rounded to the nearest dollar.

By notice of deficiency dated March 3rd, 2025, respondent determined a deficiency of $15,170 for 2018 and additions to tax pursuant to section 6651(a)(1) for $3,413, section 6651(a)(2) for $3,793, and section 6654(a) for $492. KK

Trial in this case was conducted in Seattle, Washington on November 2nd, 2026. Petitioner represented himself. Respondent was represented by Rachel Woodard-Kelley. The parties' Stipulation of Facts was admitted

into evidence along with the attached exhibits.

On the evidence before us, and using the burden-of-proof principles explained below, the Court finds the following facts:

FINDINGS OF FACT

Petitioner resided in Washington at the time he filed his petition in this case. On December 9, 2024, respondent issued petitioner a CP2566 Notice advising petitioner that respondent had not received his income tax return for 2018 and that respondent issued a corresponding Section 6020(b) ASFR Certification, where respondent identified information to constitute a valid 2018 return for petitioner.

Petitioner filed a 2018 Form 1040, U.S. Individual Income Tax Return, signed and dated August 8, 2024 and January 27, 2025. This return was not filed until February 19, 2025. On his return, petitioner claimed a $12,000 standard deduction and left entries blank or filled entries in with zeroes.

Petitioner listed his occupation as a machinist on his return. For 2018 PayPal issued petitioner a Form 1099-K, Payment Card and Third Party Network Transactions, reporting $63,229 in gross income. For 2018 Boeing Employees Credit Union (BECU) issued petitioner a Form 1099-INT, Interest Income, reporting $50 in interest

income.

For 2018 petitioner was a self-employed machinist who received payments from his clients. He used PayPal as a credit card processing system and to send client invoices.

Respondent's account transcript for petitioner's 2018 tax year shows that petitioner did not make any payments.

OPINION

Generally, the Commissioner's determinations in a notice of deficiency are presumed correct, and the taxpayer bears the burden of proving those determinations erroneous. Rule 142(a)(1); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). In unreported income cases such as this, the Commissioner must establish "some evidentiary foundation" connecting the taxpayer with the income-producing activity or demonstrating that the taxpayer actually received unreported income. *See Weimerskirch v. Commissioner*, 596 F.2d 358, 361-362 (9th Cir. 1979), *rev'g* 67 T.C. 672 (1977); *see also Edwards v. Commissioner*, 680 F.2d 1268, 1270-1271 (9th Cir. 1982) (holding that the Commissioner's assertion of a deficiency is presumptively correct once some substantive evidence is introduced demonstrating that the taxpayer received unreported income). The requisite evidentiary foundation is minimal

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and need not include direct evidence. *See Banister v. Commissioner*, T.C. Memo. 2008-201, *aff'd*, 418 F. App'x 637 (9th Cir. 2011).

If the Commissioner introduces threshold evidence that the taxpayer received unreported income, the burden shifts to the taxpayer, who must establish by a preponderance of the evidence that the deficiency was arbitrary or erroneous. *Walquist v. Commissioner*, 152 T.C. 61, 67–68 (2019) (citing *Helvering v. Taylor*, 293 U.S. 507, 515 (1935)). Respondent met the burden of production as to the unreported income determined in the notice of deficiency. Respondent produced a Form 1099-INT and a Form 1099-K. Petitioner does not dispute receiving income and interest income. Petitioner has not shown that the burden of proof should shift to respondent as to any relevant factual issue. Petitioner has the burden to show by a preponderance of the evidence that the deficiency was arbitrary or erroneous. *Id.*

Gross income generally includes all income from whatever source derived, including wages and interest. § 61(a); *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 429-430 (1955); *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988), *aff'g* T.C. Memo. 1987-225; Treas. Reg. § 1.61-2(a)(1). The United States Supreme Court has held consistently that Congress defined gross income to

the extent the "'the full measure of its taxing power.'" *Commissioner v. Glenshaw Glass Co.*, 348 U.S. at 429 (quoting *Helvering v. Clifford*, 309 U.S. 331, 334 (1940)).

Petitioner did not make any valid arguments that his wages or interest income are excludable from gross income because of any specific provision of law. *See Rodriguez v. Commissioner*, T.C. Memo. 2009-92.

We do not need to discuss petitioner's frivolous and groundless arguments. *See Heisey v. Commissioner*, T.C. Memo. 2002-41, slip op. at 4, *aff'd*, 59 F. App'x 233 (9th Cir. 2003). We shall not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984).

The Commissioner bears the burden of production with respect to a taxpayer's liability for additions to tax, requiring the Commissioner to come forward with sufficient evidence indicating that the imposition of additions to tax is appropriate. *See* § 7491(c); *Higbee v. Commissioner*, 116 T.C. 438, 446 (2001). Once the Commissioner satisfies the burden of production, the taxpayer must come forward with persuasive evidence that the Commissioner's determination of additions to tax is incorrect or that the taxpayer has an affirmative defense

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such as reasonable cause. *See* Rule 142(a); *Higbee v. Commissioner*, 116 T.C. at 446-447. Petitioner's frivolous arguments do not establish reasonable cause. *See McGowan v. Commissioner*, T.C. Memo. 2006-154, slip op. at 5.

Section 6651(a)(1) authorizes the imposition of an addition to tax for failure to timely file a return. To determine whether a taxpayer has filed a valid return for this purposes of section 6651(a)(1), the Court looks to the test in *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). The four-part test in *Beard v. Commissioner*, 82 T.C. at 777, requires that: (1) the document contains sufficient data to calculate tax liability, (2) the document purports to be a return, (3) there is an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) the taxpayer executes the return under penalties of perjury. Petitioner's delinquent return was not a valid return because it did not contain sufficient data to calculate his tax liability. Furthermore, it was filed after April 15, 2019. Petitioner did not show reasonable cause and is liable for the addition to tax pursuant to section 6651(a)(1).

Section 6651(a)(2) imposes an addition to tax on taxpayers for their failure to timely pay the amount of tax shown on a return. This addition to tax applies only

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when an amount of tax is shown on a return. § 6651(a)(2), (g)(2). When a taxpayer has not filed a valid return, the section 6651(a)(2) addition to tax may not be imposed unless the Secretary has prepared a substitute for return. *See Wheeler v. Commissioner*, 127 T.C. 200, 210 (2006), *aff'd*, 521 F.3d 1289 (10th Cir. 2008). Respondent has established that the Secretary prepared a substitute for return for 2018 that satisfies the requirements of section 6020(b). *See Cabirac v. Commissioner*, 120 T.C. 163, 170-172 (2003), *aff'd without published opinion*, No. 03-3157, 2004 WL 7318960 (3d Cir. Feb. 10, 2004). Respondent has shown that petitioner has failed to pay his federal income tax obligation for 2018. Petitioner has not shown reasonable cause and is liable for the addition to tax pursuant to section 6651(a)(2).

Respondent determined that petitioner was liable for an addition to tax for failure to make estimated tax payments for 2018. Section 6654(a) imposes an addition to tax on an individual who underpays his estimated tax. This addition to tax is calculated with reference to four required installment payments of the taxpayer's estimated tax liability. § 6654(c) and (d). Each required installment is equal to 25% of the "required annual payment." § 6654(d). Where a taxpayer has not filed a return for the current tax year or the immediately

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preceding tax year, the "required annual payment" is equal to 90% of the tax due for the current year. §6654(d)(1)(B).

The Commissioner's burden of production under section 7491(c) requires him to produce, for each year for which the addition to tax is determined, evidence that the taxpayer had a "required annual payment" under section 6654(d). To do so the Commissioner must establish the tax shown on the taxpayer's return for the preceding year or demonstrate that the taxpayer filed no such return. *See Wheeler*, 127 T.C. at 212. Petitioner did not file a return for 2018 and did not pay estimated tax for 2018. Respondent filed substitutes for returns for 2018. Accordingly, petitioner is liable for an addition to tax pursuant to section 6654 for 2018.

A decision will be entered for respondent. This concludes the Court's oral Findings of Facts and Opinion in this case.

(Whereupon, at 9:31 a.m., the above-entitled matter was concluded.)

CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Mark Barry Zemanek v. Commissioner

DOCKET NO.: 8984-25

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 11 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Bruce Carlson on November 4, 2026 before the United States Tax Court at its session in Seattle, WA, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.



Alicia Chavez, CDLT-226 11/4/26

Transcriber Date



Traci Fine, CDLT-169 11/5/26

Proofreader Date