

1 UNITED STATES TAX COURT
2 WASHINGTON, DC

3 Ruben [REDACTED])
4)
5 Petitioner,) Docket No.: 22573-21
6 v.)
7 COMMISSIONER OF INTERNAL REVENUE) Filed Electronically
8 Respondent,)

9 **FIRST DECLARATION OF PETITIONER RUBEN T. VARELA**

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11 I, Ruben [REDACTED], declare that:

12 1. I am the Petitioner in this case before the Court.

13 2. This Declaration includes references to documents
14 attached hereto as Exhibits A through L, all of which have been
15 redacted to remove certain private information, without further
16 notice hereinafter of such redaction.

17 3. During March, 2018, I submitted for filing my original
18 Form 1040 tax return, 2017 tax year, dated March 9, 2018, with
19 supporting documents attached thereto (the "2017 return"),
20 reflecting a refund due in the amount of \$1,373.47 (the "2017
21 refund"). A true, correct, and complete copy of the 2017 return
22 is attached hereto as **Exhibit A**.

23 4. On April 30, 2018, Respondent issued IRS Notice CP49,
24 applying the 2017 refund to a tax liability alleged to be owed
25 for the 2005 tax year (the "CP49 Notice #1"). A true, correct,
26 copy (pages 1 & 2 of 3 only) of the CP49 Notice #1 is attached
27 hereto as **Exhibit B**.

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1 5. On May 15, 2018, Respondent, under the signature of
2 Christine L. Davis, Program Manager, RICS/IVO ("Davis"), mailed
3 to me IRS "LTR 3176C" (the "3176C letter"), which threatened the
4 imposition of an Internal Revenue Code ("IRC") § 6702 civil
5 penalty in the amount of \$5,000 for filing an alleged frivolous
6 tax return, 2017 tax year. A true, correct, and complete copy
7 of the 3176C letter is attached hereto as **Exhibit C.**

8 6. In response to the 3176C letter, I sent a letter to
9 Davis dated June 5, 2018, disputing Respondent's frivolous
10 return allegation (the "June-5 letter"). A true, correct, and
11 complete copy of the June-5 letter, without attachments
12 referenced therein, is attached hereto as **Exhibit D.**

13 7. On July 15, 2019, Respondent issued IRS Notice CP15
14 (the "CP15 notice"), charging a \$5,000 penalty under IRC §
15 6702(a), 2017 tax year. A true, correct, and complete copy of
16 the CP15 notice is attached hereto as **Exhibit E.**

17 8. In response to the CP15 notice, I sent a letter dated
18 August 19, 2019, bearing a heading entitled "APPEALS REQUEST",
19 requesting an appeal to dispute Respondent's frivolous return
20 allegation. A true, correct, and complete copy of the appeals
21 request, without attachments referenced therein, is attached
22 hereto as **Exhibit F.**

23 9. On September 9, 2019, Respondent issued IRS Notice
24 CP504, Notice of intent to seize (levy) your property or rights
25 to property, for unpaid taxes (Form CIVPEN) in the amount of
26 \$5,038.50 (the "NOIL"). A true correct, and complete copy of
27 the NOIL is attached hereto as **Exhibit G.**

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1 10. In response to the NOIL, I sent a letter dated
2 November 21, 2019, disputing Respondent's frivolous return
3 allegation against the 2017 return (the "Nov-21 letter"). A
4 true, correct, and complete copy of the Nov-21 letter, without
5 attachments referenced therein, is attached hereto as **Exhibit H.**

6 11. On March 24, 2021, Respondent issued IRS Letter 3219,
7 Notice of Deficiency (the "NOD"), created on Respondent's
8 letterhead, bearing an express declaration that it was issued
9 by:

10 Denise D. Davis
11 Executive Officer
12 Return Integrity and Compliance Services
13 Integrity and Verification Operations

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15 12. The NOD alleges a tax liability owing for the 2017 tax
16 year in the amount of \$8,633.00. A true, correct, and complete
17 copy of the NOD is attached to Petitioner's First Amended
18 Petition, at **ECF #5, "Exhibit A"**.

19 13. The NOD alleges, in an attached Form 4549 - Report of
20 Income Tax Examination Changes - that the "Person with whom
21 examination changes were discussed" was me, Ruben T. Varela.

22 14. I did not receive any communication of any kind from
23 any agent, officer, or employee of Respondent, pertaining to the
24 NOD, prior to Respondent's issuance of the NOD.

25 15. I have never been requested by any agent, officer, or
26 employee of Respondent to submit to any examination regarding
27 the 2017 return.

28 16. I have never been requested by any agent, officer, or
employee of Respondent to submit any documents or other papers

1 regarding the 2017 return.

2 17. I have never had the proceedings or conclusions of any
3 "examination report" by Respondent regarding the 2017 return
4 discussed with me by any agent, officer, or employee of
5 Respondent.

6 18. On August 16, 2021, Respondent issued IRS Notice CP90,
7 entitled "Notice of intent to seize your assets and of your
8 right to a hearing", for both the 2017 and 2005 tax years,
9 alleging a civil penalty due under IRC § 6702, in the amount of
10 \$5,426.36 for tax year 2017, respectively, including interest
11 (the "CP90 Notice"). A true, correct, and complete copy of the
12 CP90 Notice is attached hereto as Exhibit I.

13 19. In response to the CP90 Notice, on August 18, 2021, I
14 timely filed IRS Form 12153, Request for a Collection Due
15 Process or Equivalent Hearing, for both the 2005 and 2017 tax
16 years (the "CDPH Request"), not attached hereto.

17 20. On February 21, 2022, as the result of a recent audit
18 performed by Respondent into the 2017 return, Respondent issued
19 IRS Notice CP21E, notifying me of changes to the 2017 return,
20 which changes reflect a refund due to me in the amount of
21 \$535.58, rather than any tax liability due. A true, correct,
22 and complete copy of the CP21E Notice is attached hereto as
23 Exhibit J.

24 21. On February 21, 2022, Respondent issued IRS Notice
25 CP49, applying the \$535.58 refund for the 2017 tax year, the
26 refund amount due to me as the result of Respondent's recent
27 audit, against a tax liability alleged to be owed for the 2018
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1 tax year (the "CP49 Notice #2"). A true, correct, and complete
2 copy of the CP49 Notice #2 is attached hereto as **Exhibit K.**

3 22. On February 28, 2022, Respondent issued IRS LTR 4473C
4 (the "4473C letter"), acknowledging receipt my CDPH Request,
5 timely submitted in August, 2021, and advising that Respondent's
6 Office of Appeals would contact me within sixty (60) days. A
7 true, correct, and complete copy of the 4473C letter is attached
8 hereto as **Exhibit L.**

9 23. As of the date of the filing of this Declaration,
10 Respondent's Office of Appeals has yet to contact me to schedule
11 any Collection Due Process Hearing regarding the 2017 return.

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13 I hereby declare upon my oath, under the penalties of
14 perjury, that the foregoing is true, and correct, to the best of
15 my knowledge and belief.

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17 Respectfully submitted,

18 Date: September 15, 2022

19 By: /s/ Ruben [REDACTED]
20 Ruben [REDACTED], Petitioner
21 Fullerton, California

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