

IRS: Remedy for \$500 Penalty

In Todd v. United States and R. S. Wintrode, 1986.C09.40332; 802 F.2d 1152 (9th Cir. 1986) Donna L. Todd altered the jurat on her return and got hit with a \$500 penalty. I get calls all the time from people that have been hit with a penalty and do not know how to effectively fight it. In paragraph 62 of that case the Court talks about the statutory remedy. I thought you might like to know about this. Below are excerpts from the case:

[12] This appeal arises from a Bivens*fn1 action against named and unnamed IRS agents for damages arising from their assessment of a penalty under 26 U.S.C. § 6702.

[14] Background

[15] The plaintiff, Donna L. Todd., filed a federal income tax return and an amended return for 1982. Below the jurat,*fn2 she typed "signed involuntarily under penalty of statutory punishment."

[16] Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

[17] The IRS assessed a \$500 penalty against Todd pursuant to 26 U.S.C. § 6702.*fn3 In response to a letter from Todd, R. S. Wintrode, Jr., the IRS District Director in Helena, Montana, wrote to Todd and explained that the added statement invalidated the tax return. Wintrode attached a photocopy of section 6703, which establishes procedures for contesting the penalty.

[62] In many respects, pursuing a remedy under section 6703 will provide more effective relief than would a Bivens action. During the pendency of the 6703 proceedings, the IRS cannot collect the penalty. If the IRS wrongfully attempts to collect the penalty, the taxpayer may obtain an injunction against the IRS. 26 U.S.C. § 6703(c)(1). As discussed above, such injunctive relief generally is unavailable. See, 26 U.S.C. § 7421(a). In 6703 proceedings, the IRS bears the burden of proof. 26 U.S.C. § 6703(a); see Jolly v. United States, 764 F.2d 642, 647 (9th Cir. 1985). Moreover, a taxpayer in section 6703 proceedings need not overcome immunity defenses in order to obtain relief. Finally, if the IRS acts unreasonably in assessing a penalty, a taxpayer who prevails in section 6703 proceedings may recover attorneys fees and costs. 26 U.S.C. § 7430. Todd v. United States and R. S. Wintrode, 1986.C09.40332; 802 F.2d 1152 (9th Cir. 1986).

I hope this helps you deal with any penalty the IRS may have alleged that you owe.

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See, 26 U.S.C. § 6703: <http://www4.law.cornell.edu/uscode/26/6703.html>