

Appendix 6

Noll v. United States, 3:99-CV-590-EJL (D. Idaho)

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Certified to be a true and correct
copy of original filed in my office.

Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho

By Sunny Trumbull
on Jul 21, 2015 8:47 am

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF IDAHO

Clifford Louis., Noll and Susan., Noll,)
husband and wife,)
Plaintiff,)
VS.)
UNITED STATES)
Defendant.)

Civ. No. CIV 99-510-200
COMPLAINT

Title 5, U.S.C. §702 JUDICIAL REVIEW

Kootenai County }
The State of Idaho } SS.,
The united States of America AD 1791 }

COMES NOW, Clifford Louis., Noll and Susan., Noll, husband and wife, hereafter referred to as Plaintiff, affirming that they are People on the Land of the original jurisdiction of The united States of America, established AD 1791.

The Plaintiff affirms under penalty of perjury, under the laws of the People on the Land of The united States of America AD 1791 (without the venue of the municipal corporation of the District of Columbia, a/k/a the UNITED STATES, established 1871, and any political subdivision thereof) that the following is true, correct, and not misleading to the best of the plaintiff's knowledge, understanding, and belief. The Plaintiff shall at all times be a proper party to this action.

JURISDICTION

Plaintiff is suffering legal wrong because of agency action. Defendant has demanded a direct tax upon Plaintiff(s) compensation for labor and sale of personally owned real estate in violation of The constitution of the united States of America, as amended 1791, The rulings of the United States Supreme Court, the United States Code, the Regulations of the Treasury Department (CFR), and the Internal Revenue Code. Defendant refuses to respond to Plaintiff's demand to know the kind of tax (ie. import/export tax, corporate franchise income tax (Subtitle A,B, C, etc.), regulated industry (BATF) tax stamps, U.S. contracts, and the specific Title, Code, and Section that makes the Plaintiff's liable for the tax assessed by the agency. The United States District Court has jurisdiction for Judicial Review under Title 5, §702.

COMPLAINT

COMES NOW, the Plaintiff seeking judicial review of the assessment against the Plaintiff(s) by unknown agents of the Internal Revenue Service, filed on an unknown date, in regard to an unknown kind of tax, authorized for collection by an unknown federal court, on an unknown date. Plaintiff has not been notified of the specific tax liability that gave rise to the lien, if said lien, in fact, does exist. Said lien was assessed in violation of the required deficiency and not made in accordance with the administrative procedures of the Secretary for the following reasons:

- 1.) **Failure to provide due process of the law.** Plaintiff(s) have been denied a Court Hearing pursuant to the 5th Amendment of the Constitution of the United States.

2. **Failure to provide a lawful warrant and probable cause affidavit.**

Defendant has seized plaintiff(s) money and real property and sold it without a warrant or Court Order in violation of the 4th Amendment to the Constitution of the United States.

3. **Lack of in personam and subject matter jurisdiction.** Authority to levy is limited to 26 U.S.C. §6331(a) and 26 CFR 301.6331-1(a)(4) Authority to levy, and does not extent to Plaintiff(s) as Plaintiff(s) have not received accrued or wages as an officer, employee or elected official of the United States, etc.

4. **Lack of statutory and regulatory authority.** Pursuant to 55 Federal Register §47633, Nov 14, 1990, 27 CFR 70.191, 26 U.S.C. 7401 and 26 CFR §301.7401-1, this collection is not authorized by law. Agents fabricated a deficiency without statutory authority applicable to the Plaintiff(s). Authority for the District Director to determine a deficiency is limited to tax liability under Subtitle A or B or chapter 41, 42, 43, or 44. None of the demands made by the agency contain any reference to the above kind of taxes. The agency's demands show the kind of tax as "1040". 1040 is the identification number of a form created specifically for the collection of the Victory Tax Act of 1942, repealed May 29, 1944. There are no sections of the code, promulgated into law by the Secretary which authorize agents to use the 1040 Form for taxes under Subtitle A or B or chapters 41, 42, 43, or 44.

5. **There is no lawful authority or jurisdiction, as a matter of law, for issuing a Notice of Lien or Levy.** Plaintiff(s) are not now, nor ever have been, the person made liable to pay any Title 26 income tax, enforced and

administered by the Alcohol, Tobacco, and Firearms Bureau or 26 U.S.C. (1954) Subchapter D - Miscellaneous Excise Taxes, Parts 40-169, Subtitle E or for any other "Revenue Taxable Activities" (18 U.S.C. §3283). The authority for IRS to Lien property is 26 U.S.C. §6321, and it's implementing regulations. This action was promulgated into law by 55 Federal Register §47616 and implemented by Title 27 CFR for Alcohol, Tobacco, and Firearms, §70.141 Lien for Taxes. The Title 26 taxes having implementing regulations are Part 20 - Estate Taxes, and Part 25 - Gift Taxes. The demands from IRS do not suggest any claim under these statutes.

6. **Lack of Implementing Regulation and regulatory authority.** Pursuant to 44 U.S.C.A. §§1504-1507, laws having general applicability to citizens of the 50 states, must be published in the Federal Register. Revenue laws are categorized pursuant to their applicable Title in the Code of Federal Regulations (CFR). 26 U.S.C. §7805(a) states "...the Secretary shall provide **all** needful rules and regulations for the enforcement of this title." The Internal Revenue Code is not self-executing. Without an implementing regulation , applicable to a particular type of tax, a statute has no force of law, and imposes no duties or penalties on the Plaintiff(s). See: Calif. Bankers Assoc. v. Schultz, 416 U.S. 25, 39 L.Ed. 2d 812, 92 S. Ct. 1494.

7. **No actual Lien/Levy or Certificate has been lawfully filed that a Notice of Lien/Levy", could provide notice of.** Because the agency lacks jurisdiction over over the Plaintiff(s) it has not, and can not adhere to the requirements of the Federal Lien Registration Act and the Uniform Commercial Code §§9400-9409. Such deficiencies include but are not limited to, the

absence of a "Tax Certificate" with the statement that "the agency has complied with all provisions of the applicable law for determining and assessing the tax." Plaintiff has requested a copy of the purported Lien/Levy, pursuant to the Freedom of Information Act, and none has been provided.

8. **No valid Summary Record of Assessment has been filed.** Pursuant to 26 U.S.C. §§6201, 6203, and their implementing regulations, 26 CFR §301.6201, Notice of Lien/Levy must be supported by a properly executed and filed Summary Record of assessment, upon which the Lien has been based. The agency has chosen not to respond to Plaintiff(s) request for a copy pursuant to 26 U.S.C. §6203 and 26 CFR §301.6203-1- Method of Assessment.

9. **No required, valid, verified Notice of Deficiency has been sent.** Pursuant to Title 26 U.S.C. §6212 and CFR §301.6212, no valid Notice of Deficiency, with a bonified, pen and ink, handmade signature, attested to be made under lawful authority, under penalty of perjury has been sent to the Plaintiff(s). See: IRM 8(24)50, 512 (1-5-83) at (5)," ...The [Deficiency] Notice is signed in pen and ink on behalf of the Commissioner,...Any copies..should have a handwritten signature and not a facsimile or reproduced signature..."
See: "An assessment is illegal and void if no required [valid] deficiency notice is sent to the taxpayer." U.S. v. Williams, (CD NY) 161 F. Supp. 158. 58 USTC 9213. (20 Fed. Proc. , L. Ed. 48:440)

10. **No required verified Notice and Demand for tax has been mailed** pursuant to 26 U.S.C. §6303 and 26 CFR §301.6303.

11. **Insufficiency of unverified Notice of Lien.** The Uniform Federal Lien Registration Act, requires that all Notices be certified, under penalty of perjury, and signed by the Secretary of the Treasury or his delegate. A signature stamp is insufficient. No such document exhibiting a valid signature exists.

12. **No “Notice of Intent to Levy” was lawfully served upon the Plaintiff(s)** pursuant to 26 U.S.C. §6331(d) and 26 CFR §301.6331(d), prior to the issuance of the Notice of Levy. In addition, none of the other required information within §6331 was lawfully served. Plaintiff(s) “wages” are not contained within the clear and unequivocal language of this section.

13. **The requirements of the Federal Debt Collection Procedures Act, Title 28 U.S.C.A. §§3001-3006, were not met** prior to the seizure and sale of Plaintiff(s) property. Such seizures and sale can only be made upon an order in the United States District Court after Summons and Complaint has been lawfully filed. Lawyers for IRS had notified Plaintiff(s) that they were no longer under investigation for inditement, for fraud or willful failure to file, prior to the agent’s seizure and sale of Plaintiff(s) property. The United States Tax Court lacked subject matter and in personam jurisdiction and did not set a Hearing. No summons and complaint by the United States, naming the Plaintiff(s) as the Defendant, was ever filed.

14. **Agents have taken sections of the Code out of context to create a non-apportioned direct tax, unauthorized by Congress, in violation of Art. 1, Sect. 2, Cl. 3, and Art. 1, Sect. 9, Cl. 4, of the Constitution of the Unites States of America.** Agents have expanded the meaning of

terms beyond the clear import of the language used within a specific section. Agents for the Defendant insist that the term “wages” as used within certain regulating sections of the code, can be lawfully expanded to all wages, whether they are specific within the code or not. Agents claim that all wages are “income” to be taxed under the 16 Amendment, but refuse to cite a specific Title, Code, and Section, promulgated into law by the Secretary through the Federal Register, which makes all laborers liable to file a return and pay a federal income tax upon their compensation for labor. The U.S. Supreme Court has repeatedly rejected this contention. See: Doyle v. Mitchell Bros., 247 U.S. 179; Flint v. Stone Tracy Co., 220 US 107; Central Illinois Publishing Services v. U.S., 435 U.S. 31; Lucas v. Earl, 281 U.S. 111. In addition, agents fraudulently claim that the Plaintiff(s) rents from real estate and profits from the sale of real estate are taxable as “income” despite the fact that the U.S. Supreme Court has held that such taxes are unconstitutional and void. See: Pollock v. Farmers Loan & Trust, 157 U.S. 240, and reaffirmed in Brushaber v. Union Pacific RR Co., 240 U.S. 1

15. **Plaintiff(s) are not a “taxpayer” as such term is defined in Title 26 U.S.C. §7701(a) 14** and therefore must be a “non-taxpayer” as such term is described in Long v. Rassmussen, 281 F. 236, 238 and Economy Plumbing and Heating v. U.S., 470 F.2d 585, 589 (1972)

16. **Property seized was not subject to seizure.** The authority of property seizures is 26 U.S.C. §7321: “Any property subject to seizure [pursuant to §7301, §7302, and §7303] to the United States under any provision of this title may be seized by the Secretary.”

Pursuant to **26 U.S.C. §7301**

Property Subject to Tax Liens which may be seized includes only the following items:

“(a) Taxable articles: Any items on which any tax is imposed. (b) Raw Materials: To be used to manufacture items upon which any tax is imposed. (c) Equipment: To be used in making any items upon which any tax is imposed. (d) Packages: Which are to be used to package items on which any tax is imposed. (e) Conveyances: Aircraft, Vehicles, etc. which are used to transport the items on which any tax is imposed.”

Pursuant to **26 U.S.C. §7302:**

“(1) Property which is intended to be used to violate the provisions of the Internal Revenue laws (this property may only be seized with a **search warrant** as provided in Title 18 Chapter 205).”

Pursuant to **26 U.S.C. §7303:**

“Other Property Subject to Forfeiture: (1) Counterfeit Stamps, (2) Falsely Stamped Packages, and (3) Fraudulent Bonds, Permits, and Entries.”

Pursuant to **26 CFR §301.6332-1**

“...Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy **is not relieved from liability** to the party who owns the property.”

17. **Plaintiff(s) have relied upon rulings of the United States Supreme Court, *Stare Decisis***, to determine that they were “non-taxpayers” without a legal duty to file a return, or withhold a tax for the United States.

18. For the above reasons, **the procedural process of the Defendant is defective**, incomplete, fraudulent and extortive, failing upon its face, due to insufficient law, depicting irregular and abusive process and lacking the jurisdictional facts necessary to bring Plaintiff(s) into the agency’s jurisdiction.

CLAIM UPON WHICH RELIEF CAN BE GRANTED

Relief can be granted upon Plaintiff(s) claim that the procedures which led to the

assessment are without statutory authority, and are in violation of The constitution of The united States of America (AD 1791), the Administrative Procedures Act, the Federal Debt Collection Procedures Act, the Federal Lien Registration Act, the Regulations of the Treasury Department, the United States Code, and the Internal Revenue Code. Plaintiff asserts that said assessments are intentionally fraudulent for the purpose of punishing the Plaintiff(s) for refusing to waive their Constitutionally guaranteed rights.

See: the United States Supreme Court's ruling,

"For the condition precedent of liability to be met, there must be a lawful assessment, either by the taxpayer or one procedurally proper by the IRS. This country's income tax system is based upon voluntary self-assessment rather than distraint." Flora v. U.S. 362 U.S. 145 (1960),

Plaintiff seeks a judicial review of the Tax Act of Congress, The promulgation into law by the Secretary via the federal register, the agent's authority to assess a liability for the Plaintiff(s), the actual assessments filed at the Office of the Secretary, the supporting documents, the nexus to the taxable source or regulated activity, the agents hand made delegation of authority, the agent's signature, in pen and ink, on assessment documents under penalty of perjury, the specific statutes from the Code of Federal Regulations wherein the Plaintiff was clearly the person made liable for the tax under §6001, and, therefore, a taxpayer pursuant to §7701, the statute of limitations of assessment, the statute of limitations of collections, the agent's authority to seize plaintiff(s) property and/or, the Court Order which has authorized the agents to confiscate Plaintiff's money and sell Plaintiff's real property.

Plaintiff(s) are not attempting to interrupt the collection of Federal Tax Liens (if said liens exist) with this Complaint for Judicial Review. Plaintiff(s) merely wishes to establish;

- (a) the kind of tax authorized by The constitution of the United states of America (AD 1791) and a specific tax Act of Congress, the date it became law, and the date promulgated, through the Federal Register, by the Secretary.
- (b) the specific Title, Section, and Code containing the clear and unequivocal language that made the Plaintiff(s) the person made liable to pay the tax.
- (c) that the assessments are procedurally proper.
- (d) if the statute of limitations for assessments were lawfully met.
- (e) the date that the liens, if they do exist, were filed, to determine the proper time line for the limitation for collection pursuant to 26 CFR §301.6502 (Anti-Injunction Act.).
- (f) That the agency's administrative record clearly demonstrates that Plaintiff(s) are a taxpayer, as such term is defined in the code, or non-taxpayer as such term is defined in Long v. Rasmussen 281 F. 236, 238 (1922); Economy Plumbing and Heating v. U.S. 470 F. 2d 585, 589 (1972) to wit;

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers and not to non-taxpayers. The latter are without their scope. No

procedure is prescribed for non-taxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal and they are neither subject nor object of the revenue laws."

and the Supreme Court's ruling in Spreckles Sugar Ref. Co. v. McClain, 192 U.S. 397, 24 S. Ct. at 382, to wit:

"Keeping in mind the well settled rule that the citizen is exempt from taxation unless same is imposed by clear and unequivocal language, and that where the construction of the tax law is doubtful, the doubt is to be resolved in favor of those whom the tax is sought to be laid..."

- (g) Did agents violate The constitution of The united States of America (AD 1791), the United States Constitution (AD 1871), the regulations of the Treasury Department, the United States Code, and /or the Internal Revenue Code by claiming Plaintiff(s) compensation for labor and sale of privately owned real estate equates to "income" as such term is defined by the Supreme Court for federal tax purposes? *Decided cases have made the distinction between wages and income and have refused to equate the two. Central Illinois Publishing Services v. U.S., 435 U.S. 31. Federal taxes on the profit from the sale of real estate or rents from real estate are unconstitutional and void. Pollock v. Farmers Loan & Trust Co., 157 U.S. 420. The term, "Income", is limited to...gain or increase arising from **corporate activity**. Doyle v. Mitchell Bros., 247 U.S. 179. An unapportioned direct tax on anything which is not income [corporate profit or gain] would be unconstitutional. C.I.R. v. Obear*

Nester Glass Co., 75 S.Ct. 570, 348 U.S. 982. *One does not derive income by rendering services and charging for them.* Edwards v. Keith, 231 Fed.Rep. 1; U.S. v. Ballard, 575 F. 2d 400 (1976); Oliver v. Halstead, 196 VA 922; 86 S.E. Rep. 2d 858.

(h) What is the exact amount of money that has been seized thus far.

PRAYER FOR RELIEF

The Plaintiff(s) pray the court will schedule a Hearing for Judicial Review of the Internal Revenue Service's Administrative Record regarding the Plaintiff(s) purported tax liability, in Coeur d'Alene, Idaho, to set certain the kind of tax, the statutory liability of the Plaintiff(s) in regard to said tax, validity of the assessments fabricated by the Defendant, the dates involving the statutes of limitations for assessment and collection, the amount of money seized, the Plaintiff(s) status as a "taxpayer" or "non-taxpayer", and the specific lawfulness of the agent's actions.

Respectfully submitted this 14 day of December, 1999

Clifford Louis, Noll
Clifford Louis., Noll

Susan Noll
Susan ., Noll

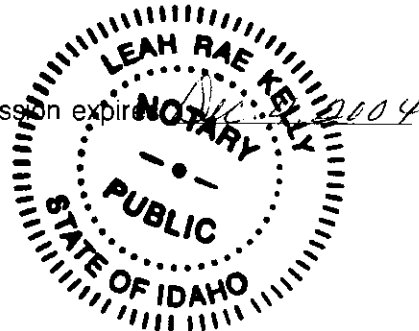
State of Idaho }
County of Kootenai }

I, Leah Rae Kelly, a Notary Public for the State of Idaho, do affirm that Clifford Louis., Noll and Susan Noll, known or identified to me, has set their hand to the above Complaint on this the 14 day of December, 1999.

Leah Rae Kelly
Notary Public for Idaho

My commission expires

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Complaint has been made this 14 day of December, 1999, by depositing a copy thereof in the United States ~~Mail~~ in a postage prepaid envelope addressed to:

Janet Reno
Attorney General for the United States
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington D.C. 20044-0300

Betty H. Richardson
United States Attorney
U.S. Attorney's Office
P.O. Box 32
Boise, Idaho 83707

Clifford Louis Hall
process server

date Dec 14, 1999



Certified to be a true and correct copy of original filed in my office.

Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho

By Sunny Trumbull
on Jul 21, 2015 8:47 am

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

CLIFFORD NOLL and SUSAN NOLL,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO: CV99-590-N-EJL

ORDER

Currently pending before the Court is Defendant United States of America's Motion to Dismiss. Plaintiffs have filed an objection to the motion. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without a hearing.¹

The Plaintiffs seek a "Hearing for Judicial Review" to, among other things, "set certain the kind of tax, [and determine] the statutory liability of the Plaintiffs in regard to said tax, the validity of the assessments . . . and the specific lawfulness of the agent's actions." (Compl. at 12). The

¹ On February 23, 2000, the Court sent the Plaintiffs a Notice to Pro Se Litigants of the Summary Judgment Rule Requirements to advise them of the procedure governing the pending dispositive motion. In deference to the Plaintiffs' pro se status, the court has liberally construed the pleadings to encompass any legally cognizable arguments which may be reasonably encompassed therein.

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Plaintiffs assert that the Court has jurisdiction to conduct this "Judicial Review" pursuant to 5 U.S.C. § 702. (Compl. at 2).

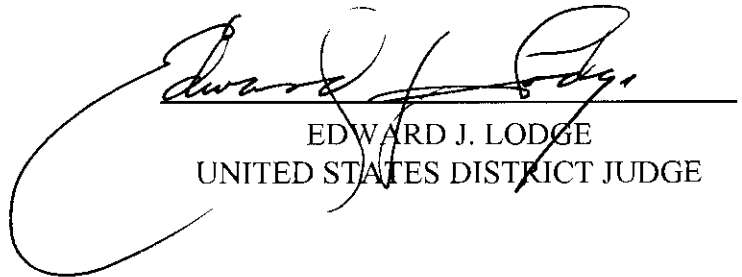
The United States, as a sovereign, may not be sued in federal court without its consent. United States v. Testan, 424 U.S. 392, 399 (1976). Federal jurisdiction, then, is dependent on a determination that two prerequisites are present: 1) a waiver of sovereign immunity, and 2) statutory authority granting subject matter jurisdiction over the claims asserted by the plaintiff. E.J. Friedman Co., Inc. v. United States, 6 F.3d 1355, 1357 (9th Cir. 1993); Arford v. United States, 934 F.2d 229, 231 (9th Cir. 1991). The government correctly notes that the Ninth Circuit, in Hughes v. United States, 953 F.2d 531, 536-37 (9th Cir. 1992), expressly ruled that 5 U.S.C. § 702 does not waive sovereign immunity in cases, like this, involving the assessment and collection of tax. In their objection to the Motion to Dismiss, the Plaintiffs attempt to distinguish Hughes. Plaintiffs fail, however, to undermine the Ninth Circuit's holding in Hughes that § 702 does not serve as a waiver of the government's sovereign immunity. Without a valid waiver of sovereign immunity, this Court does not have subject matter jurisdiction over this matter and, accordingly, the case must be dismissed. See E.J. Friedman Co., Inc., 6 F.3d at 1358-59.

ORDER

Based on the foregoing, the Court being fully advised in the premises it is **HEREBY ORDERED** that the United States' Motion to Dismiss (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that this case is **DISMISSED** in its entirety.

Dated this 24th day of April, 2000.


EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Idaho
April 24, 2000

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 3:99-cv-00590

I certify that a copy of the attached document was mailed to the following named persons:

Clifford Louis Noll
715 N 13th St
Coeur d'Alene, ID 83814

Susan Noll
715 N 13th St
Coeur d'Alene, ID 83814

William T Murphy, Esq.
US DEPT OF JUSTICE
Tax Division
PO Box 683-Ben Franklin Station
Washington, DC 20044

Cameron S. Burke, Clerk

Date: April 25, 2000

BY: Nick Jones
(Deputy Clerk)