

Appendix 5

Noll v. United States, 3:97-CV-145-EJL (D. Idaho)

U.S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 5:10 P

MAR 31 1998

CLERK, U.S. DISTRICT COURT
By [Signature] Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CLIFFORD L. NOLL,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendants.)
 _____)

Case No. CV97-0145-N-EJL

ORDER



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 24, 2015 8:23 am

Currently pending before the Court is Defendant's June 6, 1997, Motion to Dismiss (Docket No. 5) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Plaintiff subsequently filed a Motion to Proceed (Docket No. 11) on August 6, 1997.

Having completed a careful review of the above-entitled action and otherwise being fully advised, the Court enters the following Order: Due to the fact that Plaintiff failed to indicate any statutory scheme or regulation waiving sovereign immunity, thereby failing to confer subject matter jurisdiction, the Court hereby orders that Defendant's Motion to Dismiss (Docket No. 5) be granted and Plaintiff's Motion to Proceed (Docket No. 11) be denied. Additionally, Plaintiff's Complaint (Docket No. 1) is dismissed in its entirety with prejudice.

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I.

BACKGROUND FACTS

On April 10, 1997, Plaintiff filed the instant action naming the United States as defendant. This action is one of numerous suits brought by the Plaintiff challenging the constitutionality of the Internal Revenue Service's (IRS) authority to assess federal income taxes and the manner in which such taxes are collected.¹ Plaintiff argues that in 1988 IRS agents erroneously asserted that he should have filed 1040 tax returns for the years 1976 thru 1984. Operating on the premise that he did not engage in activities subject to taxation, Plaintiff was reticent to file the delinquent returns.

Apparently, the IRS informed Plaintiff that if he maintained his position of refusing to file the delinquent returns, such returns would be filed on his behalf by IRS agents. Eventually, on or about May 8 and November 10 in 1989, taxes were assessed against Plaintiff and lien notices were subsequently filed in Kootenai County. The IRS informed Plaintiff that he owed approximately \$137,000.00 for income tax deriving from various profits and gains received during the disputed time period. Plaintiff's wife was also assessed as owing \$57,641.00 in delinquent taxes.

Among other things, Plaintiff asserts that the IRS's assessment of income tax with regards to his personal financial ventures, violates Article 1 Section 9, Clause 4 of the United States Constitution and that money received from labor or personal contracts is an inalienable right, not a governmental privilege. In keeping with this constitutional claim, Plaintiff maintains that in the absence of a federal privilege, income tax can not be assessed against his personal financial

¹Plaintiff's last action Noll v. IRS, 96 CV 0280-N-EJL was dismissed for lack of subject matter jurisdiction.

activities. Plaintiff also claims that in assessing and attempting to collect federal taxes, numerous revenue agents embarked on a campaign of fraudulent, incompetent, coercive, and intimidating behavior. Based on these perceived deprivations of constitutional rights, Plaintiff seeks in excess of \$18,000,000.00 for actual, compensatory, and punitive damages.

II.

MOTION TO DISMISS

A. Standard of Review

When analyzing a motion to dismiss, the Court must accept as true all allegations of material fact contained in the complaint and construe them in the light most favorable to the non-moving party. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1991), cert. denied, 506 U.S. 999, 113 S.Ct. 599, 121 L.Ed.2d 536 (1992); *Church of Scientology of Ca. v. Flynn*, 744 F.2d 694, 696 (9th Cir. 1984). Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim that would entitle it to relief. See generally, *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994); *Abramson v. Brownstein*, 897 F.2d 389, 391 (9th Cir. 1990); *California Dump Truck Owners Assoc. v. Associated General Contractors, etc.*, 562 F.2d 607 (9th Cir. 1977). Thus, the issue is not whether the plaintiff will ultimately prevail but whether it is entitled to offer evidence to support the claim. *Scheuer*, 416 U.S. at 236, as cited in *Cervantes v. City of San Diego*, 5 F.3d 1273 (9th Cir. 1993). The Court must also limit its review to the allegations of the complaint when ruling upon such a motion. *Williford v. People of the State of California*, 352

F.2d 474 (9th Cir. 1965); *Zatkin v. Primuth*, 551 F.Supp. 39 (S.D. Cal. 1982); *Swensen v. Murchison*, 507 F.Supp. 509 (N.D. Cal. 1981).

B. Failure to State a Claim

The purpose of a Rule 12(b)(6) motion is to test the sufficiency of the claim for relief by addressing itself solely to the failure of the complaint to state a claim. The Ninth Circuit held that “in dismissals for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegations of other facts.” *Cook, Perkiss & Liehe, Inc. v. Northern California Collection Service, Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). While amendments are liberally permitted under Fed. R. Civ. P. 15(a), the district court may deny leave to amend when there has been an undue delay in bringing the motion, and the opposing party would be unfairly prejudiced by the amendments. *U.S. v. Pend Oreille Public Utility Dist. No. 1*, 28 F.3d 1544, 1552-53 (9th Cir. 1994), cert. denied, 514, U.S. 1015, 115 S.Ct. 1356, 131 L.Ed.2d 214 (1995).

Generally, the Court may not consider any material beyond the pleadings in ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Branch v. Tunnel*, 14 F.3d 449, 453 (9th Cir. 1993), cert. denied, 512 U.S. 1219, 114 S.Ct. 2704, 129 L.Ed.2d 832 (1994). If materials outside the pleadings are considered, the motion is converted to a motion for summary judgment and will be governed by the provisions contained in Fed. R. Civ. P. 56. When a court interprets a motion to dismiss as one for summary judgment, it must inform the plaintiff, especially if the plaintiff is proceeding *pro se*, that it is considering more than the pleadings and the plaintiff must be afforded an opportunity to present all pertinent material in response. *Anderson v. Angelone*, 86 F.3d 932, 934 (9th Cir. 1996). However, if a district court concludes that subject matter jurisdiction is lacking, it

“has no power to rule alternatively on the merits of a case.” *Wages v. Internal Revenue Service*, 915 F.2d 1230, 1234 (9th Cir 1989), cert. denied, 498 U.S. 1096, 111 S.Ct. 986, 112 L.Ed.2d 1071 (1991)

C. Subject Matter Jurisdiction

Pursuant to deciding a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the district court may receive evidence to resolve underlying factual disputes. *Biotics Research Corp v. Heckler*, 710 F.2d 1375, 1379 (9th Cir. 1983). The Ninth Circuit specifically determined that ‘unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the substance of a complaint’s jurisdictional allegations despite their formal sufficiency, and in doing so rely on affidavits or any other evidence properly before the court.’ *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996) (quoting *St. Clair v. City of Chino*, 880 F.2d 199, 201 (9th Cir. 1989), cert. denied, 494 U.S. 993, 110 S.Ct. 541, 107 L.Ed.2d 539 (1989)), see also, *Land v. Dollar*, 330 U.S. 731, 735 n.4, 67 S.Ct. 1009, 1011 n.4, 91 L.Ed. 1209 (1947) (“[W]hen a question of the District Court’s jurisdiction is raised, either by a party or by the court on its own motion, ...the court may inquire, by affidavits or otherwise, into the facts as they exist.”). The consideration of such evidence does not convert the motion into one for summary judgment. *Biotics Research Corp v. Heckler*, 710 F.2d at 1379. However, such jurisdictional fact-finding is inappropriate where jurisdiction and substantive issues are “so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits’ of an action.” *Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.*, 711 F.2d 138 (9th Cir. 1983) (quoting *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1979)).

III.

SOVEREIGN IMMUNITY

The United States, as a sovereign, may not be sued for damages without its prior consent, and the terms of consent define the district court's jurisdiction to hear the suit. *United States v. Testan*, 424 U.S. 392, 399, 96 S.Ct. 948, 47 L.Ed.2d 114 (1976), see also, *Hutchinson v. United States*, 667 F.2d 1322, 1327 (9th Cir. 1982). Moreover, the bar of sovereign immunity extends to United States agents and officers where they are sued in their official capacity for their actions within the scope of their employment. *Hutchinson v. United States*, 667 F.2d at 1327. The Supreme Court specifically determined that "[w]here a suit has not been consented to by the United States, dismissal of the action is required." *United States v. Testan*, 424 U.S. at 399. The existence of express Congressional consent is a prerequisite for jurisdiction. *United States v. Mitchell*, 463 U.S. 206, 212, 103 S.Ct. 2961, 2965, 77 L.Ed.2d 580 (1983). As such, an action cannot be maintained against the United States unless it is brought in compliance with a specific statute under which the United States consents to suit. *Testan*, 424 U.S. at 399.

A waiver of sovereign immunity cannot be implied, but must be "unequivocally expressed" and strictly construed in favor of the United States. *United States v. Washington*, 872 F.2d 874, 877 (9th Cir. 1989), see also, *United States v. Nordic Village*, 503 U.S. 30, 34, 112 S.Ct. 1011, 1014-15, 117 L.Ed.2d 181 (1992). Absent an express waiver of sovereign immunity, there is no right to money damages in a suit against the United States. *Testan*, 424 U.S. at 400. Plaintiff bears the burden of showing a waiver of sovereign immunity. *Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987), cert. denied, 487 U.S. 1204, 108 S.Ct. 2845, 101 L.Ed.2d 882 (1988); *Gilbert v. DaGrossa*, 765

F.2d 1455, 1458-1459 (9th Cir. 1985), see also, *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983) (per curiam), cert. denied, 466 U.S. 958, 104 S.Ct. 2168, 80 L.Ed.2d 552 (1984).

A. Statutory Waiver

Plaintiff asserts jurisdiction under 28 U.S.C. §§ 1331 and 1343 (3) and (4). These are general jurisdiction statutes and cannot be construed as constituting a waiver of the government's sovereign immunity. *Gilbert v. DaGrossa*, 765 F.2d at 1458. The Ninth Circuit specifically determined that "[a] mere assertion that general jurisdiction statutes apply does not suffice to confer jurisdiction when...the government did not waive its immunity." *Hughes v. United States*, 953 F.2d 532, 539 n. 5 (9th Cir. 1992), see also, *Lonsdale v. United States*, 919 F.2d 1440, 1443-44 (10th Cir. 1990). As such, these sections do not expressly waive sovereign immunity nor do they confer jurisdiction.

Plaintiff seeks to establish waiver and jurisdiction under 28 U.S.C. § 1346(a)(1). Section 1346(a)(1) of Title 28 provides a specific grant of jurisdiction to federal district courts over actions for the refund of any internal revenue tax allegedly, erroneously or illegally assessed or collected. See, 28 U.S.C. § 1346(a)(1) (1997). Internal Revenue Code section 7422 grants a waiver of sovereign immunity to permit jurisdiction under 28 U.S.C. § 1346(a)(1). See, 26 U.S.C. § 7422(a) (1977). Nevertheless, as a prerequisite to jurisdiction under section 1346(a)(1), the taxpayer must: (1) make full payment of taxes assessed, and (2) file an administrative claim for a refund which the IRS rejects or does not act upon within six months. 26 U.S.C. § 6532(a)(1) (1997); *Thomas v. United States*, 755 F.2d 728, 729 (9th Cir. 1985).

Throughout his briefs, Plaintiff made it abundantly clear that this suit is not about a tax refund, but instead relates to actual damages arising from the collection of delinquent taxes and subsequent lien filing. As such, the relief Plaintiff seeks does not fall within the refund scope of section

1346(a)(1), thus negating any claim of waiver thereby depriving the Court of jurisdiction. In any event, even assuming *arguendo* that Plaintiff asserted tax recovery under section 1346(a)(1), he still failed to offer facts demonstrating that he met the full payment and filing prerequisites. Since Plaintiff failed to demonstrate exhaustion of administrative remedies or full payment of the tax assessments, any refund claim is barred by the doctrine of sovereign immunity. Thus, this Court lacks subject matter jurisdiction over Plaintiff's claims under section 1346(a)(1).

Plaintiff also argues waiver and jurisdiction under 28 U.S.C. §§ 2201 and 2410. Section 2201 grants a district court with jurisdiction over cases involving declaratory relief. *See*, 28 U.S.C. § 2201(a) (1997). However, the statute provides for a specific exemption for cases "with respect to Federal taxes". *Hughes v. United States*, 953 F.2d at 536-37; *E.J. Friedman Co., Inc. v. United States*, 6 F.3d 1355, 1358-59 (9th Cir. 1993); 28 U.S.C. § 2201(a). Due to the fact that the case at bar involves federal taxes, section 2201 cannot serve as a waiver of sovereign immunity. *Hughes*, 953 F.2d at 536-37. Consequently, the Court cannot assert jurisdiction under section 2201.

Section 2410 provides that the United States may be named as a party:

[I]n any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter-- (1) to quiet title to, (2) to foreclose a mortgage or other lien upon, (3) to partition, (4) to condemn, or (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien.

28 U.S.C. § 2410 (a) (1997). This section waives sovereign immunity and vests jurisdiction for matters falling within the scope of the statute. *Hughes*, at 538. The Ninth Circuit strictly limits the reach and application of section 2410(a). *Id.* at 538. Specifically, a taxpayer cannot use section 2410 to collaterally attack the merits of an assessment. *Elias v. Connett*, 908 F.2d 521, 527 (9th Cir.

1990). Furthermore, if the government sells an encumbered property prior to commencement of an action and no longer claims an interest in the property, section 2410 jurisdiction no longer applies. *Hughes*, at 538.

A review of the record reveals that Plaintiff is not seeking any property relief within the scope of section 2410. Rather, Plaintiff is seeking actual, compensatory and punitive damages for alleged deprivation of constitutional rights by Defendant's agents. Whatever limited jurisdiction section 2410 may provide, "does not extend to an omnibus challenge to the authority of the Internal Revenue service to function." *Lonsdale v. United States*, 919 F.2d 1440, 1443, (10th Cir. 1990). Thus, Plaintiff's action is not cognizable under section 2410. Accordingly, due to the fact that Plaintiff failed to state a section 2410 cause of action, the United States did not waive its sovereign immunity to suit and as such, the Court lacks jurisdiction to consider Plaintiff's complaints under section 2410.

Finally, Plaintiff claims damages under 42 U.S.C. § 1983. Section 1983 permits civil actions for constitution deprivations against "persons acting 'under color of state law' and not to persons acting pursuant to federal law." *Chatman v. Hernandez*, 805 F.2d 453, 455 (9th Cir. 1986) (quoting *Cervoni v. Secretary of H.E.W.*, 581 F.2d 1010, 1019 (1st Cir. 1978)). Generally, section 1983 actions cannot be maintained against either the United States or its officials. *Stonecipher v. Bray*, 653 F.2d 398, 401 (9th Cir. 1981). However, an exception may transpire when federal agents act in conspiracy with state officials under color of state law. *Stonecipher v. Bray*, 653 F.2d at 401, see also, *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1986), cert. denied, 479 U.S. 1054, 107 S.Ct. 928, 93 L.Ed.2d 979.

Essentially, Plaintiff alleges that his constitutional rights were violated by federal agents acting under the scope of federal law. The Ninth Circuit specifically determined that such claims are “beyond the scope of Section 1983.” *Chatman v. Hernandez*, 805 F.2d at 455. Additionally, Plaintiff fails to allege any conspiracy between state and federal actors. As such, Plaintiff does not have a cause of action against the United States under section 1983, because the Defendant is a federal entity and the IRS agents did not act under the color of state law. Thus, this Court lacks jurisdiction to entertain Plaintiff’s complaints under section 1983.

B. Bivens Doctrine

Plaintiff alternatively asserts waiver and jurisdiction under the *Bivens* doctrine. See, *Bivens v. Six Unknown Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). Under the Supreme Court’s *Bivens* decision, a person can be held liable under color of federal law for depriving another of a constitutional right. *Bivens v. Six Unknown Agents*, 403 U.S. at 397. However, as previously discussed, suits against United States employees in their official capacities also requires a waiver of sovereign immunity. *Gilbert v. DaGrossa*, 756 F.2d at 1458. Moreover, generalized allegations of constitutional violations are insufficient to rebut an assertion of immunity. *Maraziti v. First Interstate Bank*, 953 F.2d 520, 524 (9th Cir. 1992). The Ninth Circuit has never “recognized a constitutional violation arising from the collection of taxes.” *Wages v. Internal Revenue Service*, 915 F.2d at 1235. Furthermore, the Ninth Circuit specifically held that the alternative remedies provided by Congress, “particularly the right to sue the government for a refund of taxes improperly collected,” foreclose a *Bivens* action for money damages arising from the collection of taxes. *Wages*, 915 F.2d at 1235. No constitutional violation has ever been recognized for ministerial actions taken in the course of the

collection of taxes. 915 F.2d at 1235. Moreover, statutory provisions enabling a taxpayer to challenge assessments satisfy the dictates of due process. *Id.* at 1235 (citation omitted).

Plaintiff claims money damages for fraudulent, incompetent, coercive and intimidating behavior on behalf of several IRS agents, allegedly resulting in the violation of various constitutional rights. However, Plaintiff failed to name any specific IRS agent as a party to the suit at bar. Even assuming *arguendo* that individual agents were named, sovereign immunity would still preclude Plaintiff's action. Sovereign immunity cannot be avoided by naming individual officers and employees of the United States as defendants. *Gilbert*, 756 F.2d at 1458. Moreover, as discussed previously, alternative statutory remedies for the recovery of improperly collected taxes are available to the Plaintiff. Furthermore, Plaintiff's damage claims are premised on the violation of constitutional rights. Thus, Plaintiff's *Bivens* action for damages arising from improperly collected taxes is foreclosed. Accordingly, the Court lacks jurisdiction to review Plaintiff's claim under a *Bivens* type action.

Plaintiff failed to cite any statute or regulation which would serve to waive the government's sovereign immunity, as applied to the facts at bar. Moreover, Plaintiff failed to assert that the IRS agents involved acted under anything but the color of federal law. Therefore, subject matter jurisdiction is not conferred and as such, the Court is foreclosed from reviewing the merits of Plaintiff's claims.

IV.

REVIEW OF MOTIONS

Defendant requests that this Court grant a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Plaintiff filed a motion to proceed. Since this Court determined that Plaintiff failed to provide a statute or regulation conferring jurisdiction, the merits of Plaintiff's claim cannot be addressed. As such, Defendant is entitled to dismissal of Plaintiff's action. Accordingly, Plaintiff's motion to proceed is denied and Plaintiff's complaint is dismissed in its entirety with prejudice.

V.

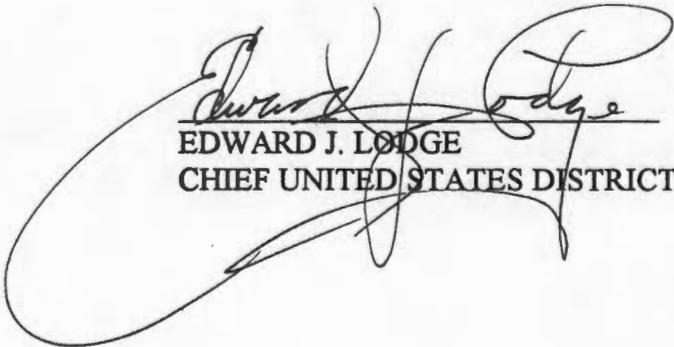
ORDER

Based upon the foregoing, the Court having been fully informed in the premises,

IT IS HEREBY ORDERED that:

- 1) Defendant's Motion to Dismiss (Docket No. 5) is **GRANTED**.
- 2) Plaintiff's Motion to Proceed (Docket No. 11) is **DENIED**.
- 3) Plaintiff's Complaint (Docket No. 1) is **DISMISSED** in its entirety with prejudice.

DATED this 31st day of March, 1998.


EDWARD J. LODGE
CHIEF UNITED STATES DISTRICT JUDGE

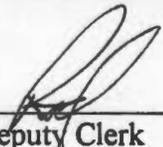
MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this
1st day of April, 19 98, to the following parties:

CLIFFORD L. NOLL
715 N. 13th ST.
COEUR D' ALENE ID 83814

RICHARD R. WARD
U.S. DEPT. OF JUSTICE
P.O. BOX 638
BEN FRANKLIN STATION
WASHINGTON, D.C. 20044-0683

Cameron S. Burke, Clerk
United States District Court



by Deputy Clerk

to fraud, coercion, extortion, collusion, filing false tax returns, filing unlawful liens, unlawfully confiscating personal and real estate property.

TO WIT: In 1988, IRS agents claimed that I should have filed 1040 Tax returns for the years 1984, 1983, 1982, 1981, 1980, 1979, 1978, 1977, and 1976. That said that I had engaged in activities that, by the laws of the United States carried upon them a Federal Excise Tax. I told them that I had not engaged in any such privileged activities. They sent me a letter stating that they had determined that I had, but offered no

(continued on next page)

36 documentation or proof. When I complained, they said the burden of proof was upon
37 me. In essence, they said that I was guilty until I could prove myself innocent. They
38 informed me that agent John Peterson was to investigate and file tax returns for me if I
39 continued to refuse to waive rights and be a witness against myself. They insinuated
40 that I was a "tax protester" and that they were "going to get me". I am not a tax
41 protester! I told them that I was not a "person required to file", and therefore, was not
42 under their jurisdiction. Some time later I was informed that I owed approximately
43 \$137,000.00 for income tax on profit or gain that I had supposedly received. Again
44 they offered no documentation to show that I had been involved in any kind of taxable
45 activity. They also informed me that my wife, Susan J. Noll, owed approximately
46 \$57,641.00 in taxes for being a "housewife". Again, they offered no documentation to
47 show that the laws of the United States Tax code made being a housewife a taxable
48 activity. The agents fraudulently claim that the terms "1040 form" and "income tax" are
49 the same thing and can be used interchangeably. IRS Code makes the distinction that
50 a "1040 form" is used for Federal Employees Wage Tax and for an excise tax upon the
51 wages of officers of U.S. corporations. "Income Tax" is an excise tax on profit or gain
52 from companies formed under U.S. laws of incorporation and therefore are subject to
53 Federal regulation. Agents also use the word "person" and "taxpayer" interchangeably
54 although Internal Revenue Laws make the distinction that only certain "persons" are
55 required to file. Agents use the term "income" and "compensation" interchangeably.
56 The Internal Revenue laws and the Federal Courts makes the distinction that "income"
57 is profit or gain from a corporate activity; "compensation" is an equal exchange and not

58 taxable. They said if we could not prove that we had not received income, they would
59 fabricate a claim that we would have to disprove. They said that if we did not disprove
60 their claim, they would assess a tax and file Federal Liens against our property. We
61 asked how someone would prove that they did not receive hundreds of thousands of
62 dollars; they responded, " that is your problem!" Agents fraudulently claim that there
63 are Federal Tax laws which allow them to assess and collect a direct tax upon all
64 compensation for labor earned by natural born sovereign citizens residing within the 50
65 states. I have continually asked, and am now demanding that they state for the court
66 record, specifically what law is it? When was it passed into law by the congress of the
67 United States? When did the Secretary of the Treasury promulgate the use of sections
68 of Title 26 USC or Title 27 USC into law to be used for the collection of such taxes?

69 SEE:

70
71 The agents fraudulently insinuate that the 16th Amendment gave them unlimited power
72 as professional auditing agents for the U.S. Dept. of the Treasury, Internal Revenue
73 Service, and gives whatever they "say" the power of law. The Supreme Court has ruled
74 in the Brushaber Case that the 16th Amendment did not give unlimited power. In fact,
75 the Court said that its purpose was "...drawn with the object of maintaining the
76 limitations of the Constitution..."

77
78 I think, at this point, it is important to note that the IRS sends out a notice that taxpayers
79 are required to keep records for 3 years for auditing purposes. In this case the agents
80 said, in essence, that "we don't care if you are not a person required to file by law. We

81 don't care that the statutory requirement is 3 years, we want records for 12 years. If you
82 don't capitulate, we are going to use the power of the IRS to put the "screws to you".
83 Isn't that tactic extortion? Black's Law Dictionary describes "extortion" as "The
84 obtaining of property from another induced by wrongful use of actual or threatened
85 force, violence, or fear, or under color of official right. 18 U.S.C.A. Sect. 871 et seq.;

86 sect. 1951. It further states "... (2) accuse anyone of a criminal offense;" or "... (4) take
87 or withhold action as an official, or cause an official to take or withhold action." or "... (6)
88 testify or provide information or withhold testimony or information with respect to
89 another's legal claim or defense; ..."

90 SEE BOTHKE v FLOUR ENGINEERS., 713, F.2d 1405 (1983). In this case the U.S.
91 Court of Appeals ruled that if a taxpayer has informed an IRS agent that there has been
92 an error in the assessment and the agent continues to levy action without first
93 determining if the taxpayer's argument has merit, such agent loses his immunity from
94 suit.

95

96 As the facts in this case are brought out in court, it will become obvious that the agents
97 never had any facts or documents that indicated that the plaintiff was ever involved in
98 any activity that would have required him to file by law. It will become obvious that the
99 agents had no documentation to support the figures they claimed as "taxable income".
100 It will become obvious that the agents never filed a return that was signed under the
101 penalty of perjury to which valid assessments and liens could be applied as required by
102 law. It will become obvious that the liens were never valid. It will become obvious that
103 agents insinuate that their actions are lawful but will not state specifically what law they

104 are referring to. It will become obvious that the unlawful actions of the agents has
105 ruined the business in which the plaintiff was engaged and is continuing to wreak
106 financial havoc upon the plaintiff from 1989 to the present. It will become obvious that
107 the statute for collections was up in 1994 and 1995. It will become obvious that the IRS
108 commissioners and agents named in this suit have committed extortion in order to
109 deceive the plaintiff to believing that he must surrender his property to the Federal
110 Government. SEE " Because of what appears to be a lawful command on the surface,
111 many Citizens, because of respect for the law, are cunningly coerced into waiving their
112 rights, due to ignorance." U.S. v. Minker, 350 U.S. 179, 187. It is very important to
113 realize that, according to the Supreme Court, " Waivers of Constitutional Rights, not
114 only must be voluntary, they must be knowingly intelligent acts, done with sufficient
115 awareness of the relevant circumstances and consequences." Brady v. U.S. 379 US
116 742 at 748 (1970).

117

118 Agent John Peterson's investigation did not reveal that the plaintiff had worked for the
119 Federal Government. It did not reveal that the plaintiff had received a wages as an
120 officer of a U.S. corporation. It did not reveal that the plaintiff had been involved in any
121 Federally regulated activity. It did not reveal that the plaintiff had received profit or gain
122 from investments. Because the investigation revealed no activity upon which a tax
123 could be assessed, the agents could not file a 1040 form for the plaintiff. They
124 apparently fabricated numbers and entered them into the computer because from then
125 on, I received computer generated demands for payment. Each agent that I complained

126 to that the figures were false and unsubstantiated seemed to believe what the computer
127 was generating.

128

129 Agent BETTY YOUNG, an assessment officer, was required to check all assessments
130 before they are filed to insure the accuracy of the return and supporting documents
131 before making a claim for the United States. The position of assessment officers are a
132 safety measure to prevent rogue agents from using the machinery of government to
133 deny Citizens due process under the law. Their position is also to protect the Federal
134 government from suit because of the poor performance of agents, rogue agents, or
135 conspiracy between agents within the Internal Revenue Service. Instead of demanding
136 the necessary documentation that must be filed in the office of the Secretary to make
137 the assessment and lien valid, she went along with the claims in the computer and filed
138 liens without the required supporting information. An unsigned letter from the IRS in
139 response to Freedom of Information Act request, dated June 20, 1996, states that there
140 are no documents at the office of the Secretary as required by 26 CFR 6201-1. It also
141 states that "...there are no documents prepared pursuant to IRC sect. 6065". IRC 6065
142 requires all returns, etc. to be signed under penalty of perjury.

143

144 Agent JAY HAMMER is a Freedom of Information Act disclosure officer for the Internal
145 Revenue Service. When the plaintiff requested the records and supporting documents
146 which are required to be kept in the office of the Secretary, the agent required \$119.00
147 for locating and copying the documentation that pertained specifically to the plaintiff.

148 The money was sent. When agent Hammer realized that the records and

149 documentation required by law did not exist, he sent documents which did not name or
150 identify the plaintiff, the kind of tax assessed, or the amount which must correlate with
151 the amount shown on the return as per the request. When the plaintiff complained that
152 the information the agency sent was not what was requested and paid for, the agency
153 wanted another \$116.00 to provide it. When the plaintiff sent a copy of the money order
154 as proof that he had already paid for said information, Jay Hammer sent another batch
155 of "fluff" instead of admitting that the agency did not possess the required documents to
156 make the assessments and liens valid. When the plaintiff filed suit in Federal court,
157 complaining of the agency's lack of jurisdiction and lack of necessary documentation,
158 Jay Hammer perjured himself to cover the scam. 26 CFR sect. 301.6203-1.--" The
159 district director and the director of the regional service center shall appoint one or more
160 assessment officers. The assessment shall be made by an officer signing the summary
161 record of assessment. The summary record, through supporting records, shall provide;
162 Identification of the taxpayer (Clifford L. Noll, SS # 203-36-9997), the character of the
163 liability assessed (corporate income tax, Federal Employee Tax, alcohol- tobacco-
164 firearms Tax, etc.), the taxable period (1989, 1984, 1983, 1982, 1981, 1980, 1979,
165 1978, 1977, and 1986.), if applicable, and the amount of the assessment. The amount
166 of the assessment shall, in the case of the tax shown on the return by the taxpayer, be
167 the amount so shown (1976...\$18,002.06; 1977 ... \$8,974.83; 1978...\$16,764.91;
168 1979...\$24,417.39; 1980...\$5,102.41; 1981...\$11,588.14; 1982...\$11,256.06;
169 1983...\$10,833.68; 1984...\$18,977.12). For an assessment and corresponding tax liens
170 to be valid all of the above information must be filed in the office of the Secretary on

171 11/10/88 (date of assessment listed on the tax liens that were filed). The purpose of
172 requiring all of this information to be filed is to insure that only taxes that are due under
173 the laws of the United States are claimed . This protects the taxpayer from unjust
174 claims and the agents and ^{the} agency from suit.

175

176 If the required supporting documents had been filed, red flags would have shown all
177 over. In 1988, the statute for collections of taxes was limited to 6 years. That would
178 make 1982 the furthest year back that taxes could be assessed and liened upon. [
179 NOTE: Agents still refuse to file a Form 688z, Release of Federal Tax Lien, even
180 though the statute for collection was up in 1994.] It is obvious, in the case of the
181 plaintiff, that agents were filing action beyond what the statute allowed. It would have
182 also been obvious that the returns were not signed under penalty of perjury. 26 CFR
183 sect. 6065 states "...Return(s), declaration(s), statement(s), or other document(s)
184 required to be made under any provision of the internal revenue laws or regulations
185 shall contain or be verified by a written declaration that is made under penalty of
186 perjury ..." Agents know that if they were to falsify information on documents then sign
187 under penalty of perjury that they can be sued personally for going outside the law and
188 possibly be imprisoned for committing perjury, extortion, and collusion. In cases where
189 an agent files a return based upon his numbers, it has become the tactic of choice to
190 file assessments and liens without signing the return under penalty of perjury. Without
191 a signature on a return it becomes difficult to try a specific agent for the crimes
192 committed against the taxpayer. Without a signature on the return, the return itself is
193 invalid.

194

195 The above named Commissioners of Internal Revenue have neglected to properly train
196 and over see the actions of their agents. They are allowing agents to insinuate that
197 compensation earned by sovereign citizens laboring in unregulated industries should
198 be taxed as if they were Federal employees receiving taxable wages. A Citizens right to
199 labor in unrestricted industries is not a privilege granted by the Federal government
200 and therefore is not taxable under Article 1, section 9, clause 4 of the Constitution of
201 the United States; " No capitalization, or other direct tax, shall be laid, unless in
202 proportion to the census or enumeration herein before directed to be taken."

203 SEE " A state [or the United States] may not impose a charge for the enjoyment of a
204 right preserved by the Federal Constitution." *Murdock v Pennsylvania*, 319 U.S. 105,
205 at 113.

206 SEE "...Every man has a right to the fruits of his own labor, as generally admitted; and
207 no other person can rightfully deprive him of those fruits, and appropriate them against
208 his will..." *The Antelope*, 23 U.S. 66, 120

209 SEE " The right to labor and to its protection from unlawful interference is a
210 Constitutional as well as a common law right. Every man has a natural right to the fruits
211 of his own industry." 48 Am Jur 2d. Sect. 2 page 80

212

213 The Butchers' supreme Court decision expanded our unalienable right to pursue
214 happiness to include our right to pursue any lawful business that did not infringe upon
215 the rights of others. It also defined our "labor" as our most sacred "property". Therefore
216 a tax on labor would be a Direct Tax on property. This would not include the wages

217 earned by Federal employees or officers of U. S. corporations because this
218 employment was created by the Federal government. Anything the Federal government
219 creates, it has the right to tax and control.

220 SEE " Among these unalienable rights, as proclaimed in the Declaration of
221 Independence is the right of men to pursue their happiness, by which is meant, the
222 right to pursue any business or vocation, in any manner not inconsistent with the equal
223 rights of others, which may increase their prosperity or develop their faculties, so as to
224 give them their highest enjoyment...It has been well said that , THE PROPERTY THAT
225 EVERY MAN HAS IS HIS OWN LABOR, AND IT IS THE FOUNDATION OF ALL
226 OTHER PROPERTY SO IT IS THE MOST SACRED AND INVOLABLE... to hinder his
227 enjoying... in what manner he thinks proper, without injury to his neighbor, is a plain
228 violation of the most sacred property." Butchers Union co. v Cresent City Co. 111 U.S.
229 746, at 756-757

230 SEE " Included in the right of personal liberty and the right of private property-
231 partaking of the nature of each- is the right to make contracts for the acquisition of
232 property. Chief among such contracts is that of personal employment, by which labor
233 and other services are exchanged for money and other forms of property." COPPAGE
234 V KANSAS, 236 U.S. .1, at 14.

235 SEE "... the term [liberty]... denotes not merely freedom from bodily restraint but also
236 the right of the individual to contract, to engage in any of the common occupations of
237 life, to acquire useful knowledge , to marry, to establish a home and bring up children,
238 to worship God according to the dictates of his own conscience...The established

239 doctrine is that this liberty may not be interfered with, under the guise of protecting
240 public interest, by legislative action..." MEYER V NEBRASKA, 262 U.S. 390, 399, 400.

241
242 Gross income earned in the exercise of an unalienable right is exempted by
243 fundamental law and is free from tax. The Internal Revenue Code confirms that
244 compensation earned through the exercise of a Fundamental Right is not taxable.
245 SEE 1939, 26 CFR sect. 9.22 (b)(1) "Exemptions; exclusions from gross income.
246 Certain items of income specified in section 22(b) [i.e. compensation] are exempt from
247 tax and may be excluded from gross income...(1) Those items of income which are,
248 under the Constitution, not taxable by the Federal government."

249 SEE Treasury Decision, Internal Revenue Vol. 26 No. 3640, p.769 (1924): "Gross
250 income excludes the items of income specifically exempted by statute or fundamental
251 law, are free from tax."

252 SEE Title 26 (1939) Part II, Subtitle B Section 3.21-1: "Meaning of net income. The tax
253 imposed by Title 26 of the Act is upon income. Neither income exempted by statute or
254 fundamental law, nor expenses incurred in the connection therewith, other than
255 interest, enter into the computation of net income..."

256 SEE 11 Am. Jur. Constitutional Law Sect 328, p 1133, describes the "Fundamental
257 Principles" upon which the political institutions and social structure of America rest, is
258 that all men have certain Rights of life, liberty, and the pursuit of happiness, which are
259 unalienable, fundamental, and inherent. These are real Rights and not mere privileges
260 enjoyable only through grace...Every man has a natural, fundamental right to the fruits
261 of his own industry." Therefore our Rights have the following attributes: (1) They are

262 "inalienable." (2) They are "Fundamental" and (3) they are "Inherent": Webster's

263 Dictionary defines those qualities as follows:

264 Inalienable: "Not transferable to another and not capable of being repudiated

265 [overturned or denied]."

266 Fundamental: "An essential part of the foundation. The primary source, a basic

267 principle, rule of law that serves as the background of a system."

268 Inherent: "Existing in someone as a permanent and inseparable element, quality or

269 attribute; innate:

270 Innate: "Existing in one from birth; inborn."

271 SEE " But whenever the judicial power is called into play, it is responsible to the

272 fundamental law and no other authority can intervene to force the judicial body to

273 disregard it." YAKUS V U.S., 321 U.S. 414 pg. 468 (1944).

274

275 See " Thus in the matter of taxation, the Constitution recognizes the two great classes

276 of direct and indirect taxes, and lays down two rules by which their imposition must be

277 governed, namely: the rule of apportionment as to direct taxes and the rule of uniformity

278 as to duties, imposts and excises." The decision further stated that the purpose of

279 apportionment of direct taxes by the Constitution was "equality for all under the law".

280 "...determining that, the classification of DIRECT was adopted for the purpose of

281 rendering it impossible for the government to burden, by taxation, accumulations of

282 property, real or personal, except subject to the regulation of apportionment..." "Our

283 conclusions may, therefore, be summed up as follows:

284 FIRST: We adhere to the opinion already announced, that taxes on real estate, being
285 indisputably direct taxes, taxes on rents or income of real estate are equally direct
286 taxes.

287 SECOND: We are of the opinion that taxes on personal property, or the income of
288 personal property, are likewise direct taxes.

289 THIRD: The tax imposed by sections twenty seven to thirty seven, inclusive, [relating to
290 non-apportioned direct taxes] of the Act of 1894, so far as it falls on the income of real
291 estate and of personal property, being a direct tax within the meaning the Constitution,
292 and therefore, unconstitutional and void because not apportioned according to
293 representation, all those sections, consisting of one entire scheme of taxation are
294 necessarily invalid." POLLOCK V FARMERS LOAN & TRUST CO., 158, U.S. 601,
295 at 637 (1895)

296 SEE "Direct taxes bear immediately upon persons, upon possessions, and enjoyment
297 of rights. Indirect taxes are levied upon the happening of an event or an exchange."

298 KNOWLTON V MOORE, 178 U.S. 41.

299 SEE "A tax laid upon the happening of an event is distinguished from its tangible fruits,
300 as an indirect tax..." TYLER V U.S., 497 at pg 502 (1930)

301 SEE "A tax levied upon property because of its ownership is a direct tax, whereas one
302 levied upon property because of its use is an excise, duty, or impost."

303 MANUFACTURES' TRUST CO. vs U.S., 32 F. Supp. 289.

304

305 DUTIES and IMPOSTS: are importation and exportation taxes laid by the government.

306 EXCISES: are taxes laid upon the manufacture, sale, or consumption of commodities
307 within the country, upon licenses to pursue certain [regulated] occupations and upon
308 corporate privileges; the requirement to pay such taxes involves the exercise of a
309 privilege." FLINT vs STONE TRACY CO., 220 US 107

310

311 The income tax that the Commissioners and IRS agents are required to collect can
312 ONLY be imposed upon the EXERCISE OF A PRIVILEGE. It may NOT be imposed
313 upon the EXERCISE OF A RIGHT! The plaintiff continues to assert that he DID NOT
314 involve himself in any exercise of a Federally granted privilege during the years in
315 question. Therefore, the agency lacked jurisdictional authority over him. If there is no
316 privilege being exercised, there is NO LIABILITY for the income tax.

317 SEE "Legislature can name any privilege a taxable privilege and tax it by means other
318 than an income tax, but legislature cannot name something to be a taxable privilege
319 unless it is first a privilege." [Taxation Key 53]... "The Right to receive income or
320 earnings is a right belonging to every person and the realization and receipt of income
321 is therefore not a "privilege that can be taxed." [Taxation Key 933] -JACK COLE CO. v
322 MACFARLAND, 337 S.W. 2d 453 Tenn.

323 SEE 26 R.C.L. Sect. 132 TAXATION " A Right common in every Citizen such as the
324 right to own property or to engage in business of a character not requiring regulation
325 CANNOT, however, be taxed as a special franchise by first prohibiting its exercise and
326 than permitting its enjoyment upon the payment of a certain sum of money." -STEVENS
327 v STATE, 2 Ark., 291. 35 Am Dec. 72: SPRING VAL. WATER WORKS v BARBER, 99
328 Cal. 36, 33 Pac. 735, 21 L.R.A. 416. Note: 57 L.R.A. 416

329 SEE "The individual, unlike the corporation, cannot be taxed for the mere privilege of
330 existing. The corporation is an artificial entity which owes its existence and charter
331 powers to the state; but the individuals' Right to live and own property are Natural
332 Rights for the enjoyment of which an excise cannot be imposed... We believe that the
333 conclusion is well justified that a tax laid directly upon the income of a property, real or
334 personal, may well be regarded as a tax upon the property which produces the
335 income." -REDFIELD v FISHER, Oreg. Sup. Ct. 292 at 813, 817,819. (1930)

336 SEE "Citizens under our Constitution and laws mean free inhabitants [not
337 subjects]...Every citizen and freeman is endowed with certain rights and privileges, to
338 enjoy to which no written law or statute is required. These are fundamental or natural
339 rights, recognized among all free people...that the right to ...accept employment as a
340 laborer for hire as a fundamental right is inherent in every free citizen, and is
341 indisputable..." - UNITED STATES v MORRIS, 125 F. Rept. 325, 331.

342 SEE "...The right to enjoy property without unlawful deprivation , is... a 'personal' right,
343 whether the 'property' in question is a welfare check, a home, or a savings account. In
344 fact a fundamental interdependence exists between the person's right to liberty and the
345 personal right to property. Neither could have meaning without the other." LYNCH v
346 HOUSEHOLD FINANCE CORP., 405 U.S. 538.(1970)

347
348 It is relevant to note that, nowhere in the entire Internal Revenue Code or implementing
349 regulations, is "income" defined. The tax liability is based upon "taxable income".
350 "Gross income" is NOT "taxable income." "Gross income," according to IFIS agents is
351 anything of value that comes in, compensation, wages, salary, tips, benefits, barter

352 exchanges, etc. minus statutory and Constitutional "exemptions and exclusions". In well
353 settled decisions the supreme Court has ruled that the actual meaning of the word
354 "income" is "gain and profits" severed from capital. Therefore, remuneration or
355 compensation for labor (which is an equivalent exchange) earned by sovereign citizens
356 of the 50 states is not "income"! The most significant supreme Court decision to define
357 the word "income" was EISNER v MACOMBER, 252 U.S. 189. "...it becomes essential
358 to distinguish between what is and what not "income," according
359 to truth and substance, without regard to form. Congress cannot, by any definition it
360 may adopt, conclude the matter, since it cannot by legislation, alter the Constitution,
361 from which it derives its power to legislate, and within whose limitations, alone can be
362 lawfully exercised..." The supreme Court was chastising the Government in this ruling
363 saying, in essence, "If the Congress wants to tax roses, it is not within its powers to call
364 a cactus a rose so it can impose a "rose tax" on the cactus. EISNER v MACOMBER
365 continues, "[Income is] Derived-- from-- capital--the gain--derived--from--capital, etc.
366 Here we have the essential matter--not gain accruing to capital, not a growth or
367 increment of value in investment; but a gain, a profit, something of exchangeable
368 value...severed from the capital however invested or employed, and coming in, being "
369 derived," that is received or drawn by the recipient for his separate use, benefit, and
370 disposal--that is the income derived from property. Nothing else answers the
371 description..." NOTE: The emphasis was in the original ruling.
372 SEE " The words 'gain' and 'income' mean the same thing. They are equivalent
373 terms..." -CONGRESSIONAL GLOBE, 37th Congress 2nd Session, pg. 1531

374 SEE "There must be gain before there is "income" within the 16th Amendment." -
375 U.S.C.A. CONST. AM. 16

376 SEE " There is a clear distinction between 'profit' and "wages' and compensation for
377 labor. Compensation for labor CANNOT be regarded as profit within the meaning of the
378 law. The word 'profit, as ordinarily used, means the gain made upon any business or
379 investment---a different thing altogether from mere compensation for labor." - OLIVER v
380 HALSTEAD, 86 S.E. Rep. 2d 859.

381 SEE "...Reasonable compensation for labor or services rendered is not profit..." -
382 LAURENDALE CEMETERY ASSC. v MATTHEWS, 47 Atlantic 2d 277 (1946)

383 SEE "...Congress has taxed income [profits and gains] not compensation". - CONNOR
384 v U.S., 303 F. Supp., 1187 '69

385 SEE "The phraseology of form 1040 is somewhat obscure...But it matters little [what the
386 form says]: the statute and the statute alone determines what is income to be taxed. It
387 taxes income 'derived' from many different sources; ONE DOES NOT 'DERIVE
388 INCOME' [gains or profits] BY RENDERING SERVICES AND CHARGING FOR THEM."
389 - EDWARDS v KEITH, 231 Fed. Rep. 1.

390 SEE PUBLIC SALARY ACT OF 1939, TITLE I- SECTION I. sect. 22(a) of the Internal
391 Revenue Code relating to the definition of "gross income," is amended after the words
392 "compensation for personal service" the following: "including [only] personal service as
393 an officer or employee of the United States, a State, or any political subdivision thereof,
394 or any agency or instrumentality of any one or more of the foregoing."
395

396 The first supreme Court case to challenge the erroneous idea that the 16th Amendment
397 changed the Constitution and allowed direct taxes to be issued without apportionment,
398 was BRUSHABER v UNION PACIFIC RAILROAD, (1916). SEE the following excerpts:
399 "The confusion (by Brushaber)...arises from his conclusion that the 16th Amendment
400 provides for a hitherto unknown power of taxation, that is, a power to levy an income
401 tax, which although direct, should not be subject to the regulation of
402 apportionment...The far-reaching effect of Brushaber's erroneous assumption...if
403 acceded to, would cause one provision of the Constitution to destroy another; that is, it
404 would result in bringing the provisions of the Amendment exempting a direct tax from
405 apportionment into irreconcilable conflict with the general requirement that all direct
406 taxes must be apportioned,...This result, instead of simplifying the situation and making
407 clear the limitation on the taxing power, which obviously the Amendment must have
408 been intended to accomplish, would create radical and destructive changes in our
409 Constitutional system and multiply confusion...Indeed, from any other point of view, the
410 Amendment demonstrates that NO SUCH PURPOSE WAS INTENDED, and, on the
411 contrary, shows that it is drawn with the object of maintaining the limitations of the
412 Constitution and harmonizing their operations...The 16th Amendment contains nothing
413 repudiating or challenging the ruling of the Pollock Case...The 16th Amendment, as
414 correctly interpreted, was limited to INDIRECT taxes, and FOR THAT REASON is
415 constitutional. -BRUSHABER v UNION PACIFIC RR CO., 240 U.S. 1, at 10, 11, 12, 19.
416 SEE "The 16th Amendment does not extend the power of taxation to new or exempted
417 subjects..." - PECK v LOWE, 247 US 165

418 SEE "The 16th Amendment conferred no new power of taxation but simply prohibited
419 the income tax from being taken out of the category of INDIRECT TAXATION to which
420 it inherently belonged..." - STANTON v BALTIC MINING CO., 240 U.S. 103

421
422 As recently as 1979, Howard Zaritsky, a legislative attorney for the Congressional
423 Research Service for the Library of Congress, in responding to a request by Congress
424 for a report on the applicability of the 16th Amendment, determined that "the 16th
425 Amendment had NO legal effect." The Zaritsky Report stated, "In 1916 the supreme
426 Court [Brushaber] rendered its decision regarding the Amendment. In essence the
427 court stated that there is no need for the 16th Amendment..."

428
429 SEE "The Sixteenth Amendment must be construed in connection with the taxing
430 clauses [i.e. apportionment clauses regarding Direct Taxes, uniformity clauses
431 regarding indirect taxes] of the original Constitution and the effect attributed to them
432 before the [16th] Amendment was adopted." - EISNER v MACOMBER, 252 U.S. 189, at
433 205 (1920)

434
435 THE BOTTOM LINE IS;

436
437 The United States Government did not have the power to impose a graduated, non-
438 appropriated income tax on the compensation earned by the plaintiff, CLIFFORD L.
439 NOLL, SS # 203-36-9997, A sovereign citizen of the state of Idaho, or upon his
440 fundamental right to labor before the 16th Amendment, and they could not, and

441 currently cannot impose such a tax after the 16th Amendment. As the plaintiff has
442 stated over, and over, The Internal Revenue Service Agency lacked jurisdiction over
443 him, for the years 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, and 1988,
444 for ANY REASON. It is important to note that the taxes assessed by the agency DID
445 NOT correlate with compensation for labor or return on investments, or anything else!
446 The amounts were picked out of the air by an agent and assessed, without regard for
447 agency regulations, as a punishment because the Individual Master File indicated that
448 he was their enemy [a tax protester]. The fact is; the plaintiff is not a tax protester; he is
449 simply a person NOT REQUIRED to file.

450 SEE "... (7) However, failure to adhere to agency regulations may amount to a denial of
451 due process if the regulations are required by the constitution or statute." *Arzanipour v*
452 *Immigration and Naturalization Service*, 866 F. 2d 743, 746
453 (5th Cir. 1989).

454

455 JURISDICTION HAS ALWAYS BEEN CHALLENGED IN THIS CASE

456

457 From the time Agent Peterson appeared on my door step demanding that I must file a
458 1040 form, his agency's jurisdiction over me has been challenged. His response was
459 that the IRS has jurisdiction over everyone. It is a Fact of Law that the person asserting
460 jurisdiction must, when challenged, PROVE that jurisdiction exists: *MCNUTT v G.M.*, 56
461 S. Ct. 789, 80 L. Ed. 1135, *GRIFFIN v MATTHEWS*, 310 Supp. 341, 423, F. 2d 272,
462 *BASSO v U.P.L.*, 495 F. 2d 906, *THOMSON v GASKIEL*, 62 S. Ct. 673, 83 L. Ed. 111,
463 and *ALBRECHT v U.S.*, 273 U.S. 1.

464 SEE "Jurisdiction is essential to give validity to the determinations of administrative
465 agencies and where jurisdictional requirements are not satisfied, the action of the
466 agency is a nullity..." City Street Improv. Co. v Pearson, 181 C 640, 185 P. 962, and
467 O'Neill v Dept. of Professional & Vocational Standards, 7 CA2d 393, 46 P2d 234.

468 SEE "The law requires PROOF OF JURISDICTION, to appear on the Record of the
469 administrative agency and all administrative proceedings." Hagans v Lavine, 415 U.S.
470 533

471

472 The above named Commissioners of the Internal Revenue Service have instructed
473 agents to join them in a conspiracy to deprive sovereign citizens of their property and
474 "due process" by a campaign of secrecy, innuendoes, and half-truths. The following is
475 found on the front cover of the IRS Audit Manual and The Handbook For Special
476 Agents: AGENTS:...THE MATERIAL CONTAINED IN THIS MANUAL IS
477 CONFIDENTIAL IN CHARACTER. IT MUST NOT, UNDER ANY CIRCUMSTANCES,
478 BE MADE AVAILABLE TO PERSONS OUTSIDE THE SERVICE..." The HANDBOOK
479 FOR SPECIAL AGENTS, Constitutional Law, Sect 342.12 continues by stating:

480 (2) "The privilege against self-incrimination does not permit a taxpayer to refuse to
481 obey a summons issued under IRC Sect. 7602 or a court order directing his/her
482 appearance. He/she is required to appear and cannot use the Fifth Amendment as an
483 excuse for failure to do so, although he/she may exercise it in connection with specific
484 questions. [Landy v. U.S.] He/she cannot refuse to bring his/her records, but MAY
485 DECLINE TO SUBMIT THEM FOR INSPECTION ON CONSTITUTIONAL GROUNDS.
486 In the Vadner case, the Government moved to hold a taxpayer in contempt of court for

487 refusal to obey a court order to produce his books and records. Vadner refused to
488 submit them for inspection by the Government, basing his refusal on the Fifth
489 Amendment. THE COURT DENIED THE GOVERNMENT'S MOTION TO HOLD
490 VADNER IN CONTEMPT, holding that disclosure of his assets would provide a starting
491 point for a tax evasion case."

492
493 Further the IRS Supplement published on 1/10/79 in Section 6 states:"...A summons of
494 a taxpayers books and records for return of information is not recommended."

495
496 Regarding the 4th Amendment, The supreme Court has expanded its definition, ruling
497 that: "It does not require the actual entry upon a premises and search for a seizure of
498 papers to constitute an unreasonable search and seizure within the meaning of the 4th
499 Amendment. A compulsory production of a party's private books and records, to be
500 used against himself or his property in a criminal or penal proceeding, or a forfeiture, is
501 within the spirit of the Amendment." - Boyd v U.S., 116 U.S. 616

502
503 Agents go about collecting the maximum amount of money they can (instead of, the
504 maximum amount of tax due) through fraud, collusion, and coercion, believing that the
505 agency will cover for them because the WHOLE TRUTH is hidden from the citizenry to
506 dupe them into believing that they are "taxpayers". Agents are taught that the
507 information within the IRS AUDIT MANUAL and HANDBOOK FOR SPECIAL AGENTS
508 is confidential and must not, under ANY CIRCUMSTANCES, be made available to
509 persons outside the service [SEE the front cover]. BLACK'S Law Dictionary describes

510 this technique of collection as "Collusion" -- an agreement between two or more
511 persons to defraud a person of his rights by forms of the law, or to obtain an object
512 forbidden by law. [i.e. non-appropriated direct tax on compensation for labor.] It implies
513 the existence of fraud of some kind, the employment of fraudulent means [i.e.
514 compelling a citizen who has not has not exercised a taxable privilege, to file a 1040
515 form, and demand payment to prevent the further loss of property or freedom.], or
516 unlawful means for the accomplishment of an unlawful purpose. [i.e. using Title 27
517 collection powers to extort payment of Title 26 tax claim, which HAS NO collection
518 power.] [Tomiyous v Golden, 81 Nev. 140, 400 P.2d 415, 417. A secret combination,
519 conspiracy, or concert of action between two or more persons for fraudulent or deceitful
520 purposes.

521 SEE "Because of what appears to be a lawful command on the surface, many Citizens,
522 because of respect for the law, are cunningly coerced into waiving their rights, due to
523 ignorance." U.S. v MINKER, 350 U.S. 179, 187

524
525 In 1970 the supreme court expounded on what constitutes the lawful waiving of
526 Constitutionally guaranteed rights. "WAIVERS OF CONSTITUTIONAL RIGHTS, NOT
527 ONLY MUST BE VOLUNTARY, THEY MUST BE KNOWINGLY INTELLIGENT ACTS,
528 DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES
529 AND CONSEQUENCES." - BRADY v US, 379 US 742 at 748 (1970)

530
531 TO ADD INSULT TO INJURY, the agents confiscated rents and intimidated renters
532 (causing the loss of property to valid creditors), caused the sale of real estate (far

533 below market value and confiscated the proceeds), destroyed the plaintiffs non-taxable
534 income stream and ability to provide for his family. All the assets that were being
535 amassed to provide for a college education for my children was unlawfully confiscated
536 under the guise that I had been convicted by a Federal Court for violating some portion
537 of Title 27 USC to which sections 6321, 6322, 6323 , 6324, 6331, 6332, and 6335 of
538 the IRS Code was applicable.

539
540 PLEASE FOLLOW THE MANIPULATION USED BY THE AGENCY TO DUPE
541 CITIZENS AND OTHER GOVERNMENT EMPLOYEES TO CAPITULATE TO THEIR
542 CRIMINAL ACTIVITY: NOTE; The Code of Federal Regulations (CFR) Title 26, Internal
543 Revenue, contains 799 Parts (particular subject matter of taxes). e.g. Part 1 = INCOME
544 TAX, Part 20 = ESTATE TAX, Part 25 = GIFT TAX, Part 44 = TAXES ON WAGERING,
545 Part 48 = MANUFACTURERS AND RETAILERS EXCISE TAX, etc. Obviously every
546 Section in the Internal Revenue Code and every Regulation cannot be applicable to
547 every particular type of tax. To keep things straight, each particular tax has a separate
548 "Part number" relating to the particular subject matter of the tax. e.g. Part 1 = Individual
549 Income Tax, NOT Taxes on Wagering; CERTAINLY NOT Title 27 AFT Taxes. The only
550 place in the IRC where certain agents have authority to file a return for a "taxpayer" is
551 under section 6020 Substitute for Return Authority. The Secretary has promulgated this
552 section into law for use under part 301 kind of taxes only. It is listed in Title 27 CFR as
553 301.6020. There is no authority to use section 6020 for income taxes. It would be listed
554 as 1.6020. This is the same for sections 6201 Assessment Authority, 6301 Collection
555 Authority, 6303 Notice and Demand Authority, 6321 Lien Authority, 6331 - 6343 Levy

556 and Distrain Authority, and 6671 Assessment Penalty Authority. These sections have
557 only been authorized for use in Title 27 (AFT) kind of taxes. . . QUESTION ?

558 Where's the implementing authority to use these sections for Part 1 INCOME TAX
559 (1.6020, 1.6201, 1.6302, 1.6303, 1.6321, 1.6331, 1.6343, and 1.6671). . . ANSWER =

560 It doesn't exist!! Only Those who Violate Income Tax Regulations [Not Tax Code
561 Statutes] may Incur Civil or Criminal Penalties! The Internal Revenue Code is currently
562 contained in 2 Volumes with 9722 Sections. The Income Tax Regulations are the
563 companion volumes to the Income Tax Sections of the Internal Revenue Code. The
564 Regulations are currently contained in four volumes

565 primarily related to Part 1 Income Taxes and one volume related to miscellaneous
566 types of taxes and Procedures and Administration. The Income Tax Regulations, when
567 promulgated by the Secretary, implement and interpret the Internal Revenue Code.

568 Even if there is a statute within the "Code" without a specific implementing Regulation,
569 that code section HAS NO FORCE of law. 26 USC 7805(a) "...The Secretary shall
570 prescribe all needful rules and regulations for the enforcement of this title."

571 SEE "For federal tax purposes, federal regulations govern." Dodd v United States, 223
572 F Supp 785, Lyeth v Hoey, 305 US 188, 59 S. Ct. 155

573

574 The Internal Revenue Code is not self-executing. A statute in the Internal Revenue
575 Code only authorizes the Secretary to promulgate an implementing regulation. If the
576 Secretary does nothing, the statute imposes no duties and confers no criminal or civil
577 penalties. To promulgate the implementation, the Secretary must, first, publish it in the
578 Federal Register. This is required so Congress knows what the Secretary is doing in

579 regard to taxes because only the Congress has the power to lay and collect taxes.
580 They cannot delegate that power to anyone else.

581 SEE "...the Act's civil and criminal penalties attach only upon violation of regulation
582 promulgated by the Secretary; if the secretary were to do nothing, the Act itself would
583 impose no penalties on anyone...The Government urges that since only those who
584 violate these regulations (not the code) may incur civil or criminal penalties, it is the
585 actual regulation issued by the Secretary of the Treasury and not the broad authorizing
586 language of the statute, which is to be tested against the standards against the
587 standards of the 4th Amendment." Calif. Bankers Assoc. v Shultz, 416 US 25, 44, 39 L
588 Ed 2d 812, 94 S Ct 1494

589 SEE "Although the relevant statute authorized the Secretary to impose such a duty, his
590 implementing regulations did not do so. Therefore we held that there was no duty to
591 disclose..." United States v Murphy, 809 F. 2d 142,1431

592 SEE "The reporting act is not self-executing; it can impose no duties until implementing
593 regulations have been promulgated." California Bankers Ass'n v Shultz, 416 U.S. 21,
594 26, 94 S. Ct 1494, 1500, 39 L. Ed. 2d 812

595 SEE "Failure to adhere to agency regulations [by the IRS or other agency] may amount
596 to denial of due process if regulations are required by constitution or statute..." Curley v
597 United States, 791 F. Supp. 52

598

599 IMPORTANT! A part 301 Regulation, by itself, has no legal force to promulgate or
600 implement Part 1, "Income Tax" provisions. A Part 301 Regulation is merely a cross
601 reference added, in the interest of completeness, NOT as the lawful "authority. The

602 1939 and 1954 Title 26 Internal Revenue Codes for Income Taxes, which were never
603 repealed and are the basis and nucleus of our current system of taxation, did NOT
604 contain a Part 301. From 1939 until 1961, there was NO Part 301 "Procedure and
605 Administration" outlining procedures for interest, penalties, property seizures and levies
606 for any Title 26 taxes. The preface to the 54 Regulations (February 16, 1954) states:
607 "This book [1954 Internal Revenue Code] contains rules and regulations constituting
608 Parts 1 to 79 of Title 26..." The first time Part 301 mysteriously appeared was in a
609 specially published 1961 edition of CFR Title 26. The preface to those Regulations
610 solved the mystery of the origin of Part 301, stating: "Title 27 (Alcohol, Tobacco, and
611 Firearms), formerly included...Part 300 to the end..." What Particular Types of Taxes
612 were those " Procedures and Administrations" applicable to? Alcohol, Tobacco, and
613 Firearms! Part 301 was NOT written for Title 26 Voluntary Income Taxes! These Part
614 301+ provisions carry severe penalties for noncompliance, because Alcohol, Tobacco,
615 and Firearms Tax is a "regulated " revenue taxable industry imposing a Mandatory Tax
616 upon which criminal sanctions and property seizures could be imposed! The
617 "Publishers Notice", which was added to the first page of the 1954 microfiche of the
618 CFR., after its publication, makes a reference to this suspicious 1961 altercation,
619 stating: "No Federal Register citation covering this change was discoverable." Again,
620 the IRS agents cannot lawfully impose civil or criminal penalties on what they refer to
621 as a "1040 kind of tax" because 1040 forms are only authorized for use under certain
622 limited kinds of taxes of Title 26 USC. Attempting to use a Title 27 authority to penalize
623 the plaintiff is a denial of due process.

624

625 The fact that Title 26 Income Taxes and Title 27 Alcohol, Tobacco, and Firearms Taxes
626 are two different, non-compatible types of taxes is documented in the following Senate
627 Hearing Report from the 83rd Congress, House of Representatives, House Ways and
628 Means 2/3/53-2/13/53: Dwight E. Avis, Head of the Alcohol, Tobacco, and Firearms,
629 Bureau of Internal Revenue: "Let me point this out now. This is where structure [of the
630 Income Tax and the Alcohol, Tobacco, and Firearms Tax] differs. Your income tax is a
631 100% voluntary tax and your liquor tax [Alcohol, Tobacco, and Firearms] is a 100%
632 enforced [mandatory] tax. Now the situation is as different as night and day.
633 Consequently, your same rules simply will not apply!"

634

635 A Publishers note on microfiche in the front of the 1954 Regulations, states: "Title 26,
636 [Parts 1 - 79] INTERNAL REVENUE, was established in 1954 by 19 FR[Federal
637 Register] 6224. "This Title contained administrative rules and regulations pertaining to
638 all matters to which the Internal Revenue Code of 1954 was applicable. This Title did
639 not supersede Title 26 INTERNAL REVENUE, as to those facts or circumstances to
640 which provisions of the Internal Revenue Code of 1939 were applicable."

641

642 Part 301 in the current Internal Revenue Code is titled "Procedures and
643 Administration". QUESTION ? -- "If the 1954 edition of Title 26 contained administrative
644 rules and regulations pertaining to all matters to which the Internal Revenue Code was
645 applicable, why would Title 26 need ANOTHER "Administration and Procedures"
646 merged in from Title 27? The evidence would support the argument that an individual

647 or individuals within the IRS, in 1961, took it upon themselves to move the power of the
648 Internal Revenue Service beyond the authority of Congress, which created them; and
649 to secret their activities, under the guise of law, hoping to avoid the reach of the
650 Federal Court system to reign them in. Their action, in 1961, has induced agents to
651 perpetrate the most insidious crimes, such as fraud, extortion, unwarranted searches,
652 unlawful seizures, denial of due process, etc. upon the sovereign citizens of the 50
653 United States.

654
655 Before ending this complaint, the plaintiff believes that it is important for the court to
656 recognize that the only time a direct tax upon the compensation for labor of sovereign
657 Citizens was authorized by Congress was from 1942 to 1944 under the "War Powers "
658 provision of the Constitution. SEE U.S. Constitution, Article 1, Sect. 5, clause 12. This "
659 VICTORY TAX ACT OF 1942" was the reason why the 1040 Form "INDIVIDUAL
660 INCOME AND VICTORY TAX RETURN" was created. The Victory Tax was repealed by
661 Congress on May 29, 1944 (SEE 58 Statutes at Large, Chap 210, pg 234). From 1944
662 until today, anyone can VOLUNTARILY use a 1040 Form to DONATE money to the
663 Federal Treasury. It would not violate any citizen's rights because it is a voluntary act.
664 However, in 1961, when the IRS agents started to claim the power to DEMAND that
665 sovereign citizens of the 50 states MUST FILE a Form 1040 as a means of the agency
666 to collect a direct tax based on compensation for labor; that they could seize property,
667 fine, and/or imprison those who failed to VOLUNTEER, they went beyond the authority
668 Congress gave them. In so doing, the agents violate NOT ONLY Article 1, Section 9,
669 Clause 4 of the U.S. Constitution; they also violate the 1st Amendment, which includes

670 the freedom NOT TO SPEAK; the 4th Amendment, demanding records constitutes an
671 unwarranted search; 5th Amendment, demanding that an individual be witness against
672 himself, denying due process, etc.; 6th Amendment, right to be informed of the nature
673 of the accusation, etc.; 10th Amendment, claiming powers not delegated to the Federal
674 government; and the 13th Amendment, created "involuntary servitude", pressing
675 sovereign citizens into service as book keepers for the Dept. of the Treasury. From
676 1944 to 1961 the agency used the ignorance of Citizens, and private employers, to
677 enable them to collect a massive amount of money for the U.S. Treasury. In 1961, they
678 added extortion to their bag of tricks. It is not the 16th Amendment that is
679 unconstitutional. It is the extortion of private property, in the form of a non-apportioned
680 direct tax under the guise of the 16th Amendment, that IS UNCONSTITUTIONAL.

681

682 The plaintiff has sought full disclosure of administrative remedies to remove the liens
683 which the government holds over him to this day. The agent's response was, that even
684 though the statute for collections had expired, the plaintiff "owes too much money" for
685 the liens to be released. He has sent a bill for reimbursement of damages to the
686 Commissioner of Internal Revenue, U.S. Dept. of the Treasury. He has sought full
687 disclosure of administrative remedies as to how he can be reimbursed for the damages
688 the agency has inflicted upon him. The Internal Revenue Service commissioners and
689 agents have chosen NOT to respond.

690

691

SUMMATION

692

693 Agents demanded records from the plaintiff, who was not under their jurisdiction and
694 was not required to file.

695

696 Agents went beyond the Title 26 tax code requirement that records must kept for 3
697 years. Agents demanded records for 12 years.(EXHIBIT 1)

698

699 Agents fabricated the figures used in the tax assessment, none of which are supported
700 by actual documents.

701

702 Agents filed tax liens without filing the necessary supporting documents at the office of
703 the Secretary to make the liens valid.(EXHIBIT 2)

704

705 Agents confiscated the plaintiff's property based on invalid liens.

706

707 Agents conspired with each other to use Title 27 USC power to collect an invalid Title
708 26 USC tax. *Exhibit 3*

709

710 Agents, in 1993, were confiscating money from the plaintiff and applying it to tax claims
711 that were 17 years old. Title 26 limits collection authority to 6 years. (EXHIBIT 4)

712

713 THE PLAINTIFF PRAYS the court to take action based on the following:

714

715 1.) The agents, have acted, and are acting unconstitutionally by attempting to assess
716 and collect a DIRECT TAX upon property (compensation for labor) which has not been
717 apportioned. They refer to this fraud and extortion as a "1040 kind of tax".

718

719 2.) The agents have not filed, and do not have, the necessary supporting documents
720 which are required to be filed with the office of the Secretary; therefore the
721 assessments and liens have always been invalid.

722

723 3.) The agents have unlawfully seized property by attempting to use Title 27
724 mandatory collection practices to commit grand larceny against the plaintiff.

725

726 4.) The Internal Revenue Service agents have denied the plaintiff his right to due
727 process, and in doing so, has unlawfully seized his property, plundered his pursuit of
728 happiness, and financially restrained him for 9 years. The plaintiff seeks reimbursement
729 from the United States for the losses he has suffered at the hands of their agents in the
730 amount of nine million seven hundred forty seven thousand dollars (\$9,747,000.00) in
731 actual damages, plus nine million dollars (\$9,000,000.00) in punitive damages, plus
732 legal costs. *Exhibit #5*

733

734

735

736

737 I swear, under penalty of perjury of the laws of the united States of America, that the

738 foregoing is true and correct to the best of my ability.

739

740

Clifford L. Noll

741 Clifford L. Noll, plaintiff pro se

742

743

Date April 9, 1997

744

745 State of Idaho }

746

747 County of Kootenai }

748

749 I hereby certify that on this 9th day of April, 199~~7~~⁷, the above named Citizen

750 whom I know (or has satisfactorily proven to me), appeared to attest and affirm that he

751 is the

752 Citizen executing the foregoing document.

753

754

Laurie Allen
COEUR D'ALENE, ID exp. 9/11/2001
Notary Public

755

756

757
