

United States District Court
District of Colorado
901 19th St., Rm A-105
Denver, Colorado 81147

Jeffrey T. Maehr, Sui Juris)
Petitioner)
v.) Case No.
Commissioner of Internal Revenue/)
Ginger L. Wray, Revenue Officer;)
Wells Fargo Bank, NA;)
Respondents)
)

MOTION TO QUASH IRS SUMMONS TO WELLS FARGO BANK, NA.

Jeffrey T. Maehr, Sui Juris, depending on equal protection under the Constitution, the Judicial machinery of the Rule of Law, Rules of Evidence and Rules of Civil Procedure, comes now before this Honorable Court, and moves this Honorable Court to take Mandatory Judicial Notice under Federal Rule 201(d) of the following, and to strongly and seriously address each and every fact of evidence presented to counter presumption, and for proper due process (See exhibit H) to occur. These issues have never been lawfully answered or adjudicated under due process:

- a. The United States Supreme Court, in *Haines v Kerner* 404 U.S. 519 (1972)

stated that all litigants defending themselves must be afforded the opportunity to present their evidence and that the Court should look to the substance of the complaint rather than the form, and that a minimal amount of evidence is necessary to support contention of lack of good faith. Fortney v. U.S., C.A.9 (Nev.) 1995, 59 F.3d 117.

b) The spirit of all these rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally... Fierstein v. Piper Aircraft Corp., D.C.Pa. 1948, 79 F.Supp. 217.

c) "This Constitution, and the laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land; and the judges in every state shall be bound thereby... The Senators and Representatives and members of the State legislature, and all executive and judicial officers of the United States and the several States, shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." The Constitution of the united States of America, Article VI, Cl 2, 3.

d) "The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." Reid v Covert 354 US 1, 1957.

e) A judge is an officer of the Court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. A judge is not the Court. *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

f) "Fraud upon the Court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the Court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the Court have been directly corrupted." *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

g) "The Court is free to act in a judicial capacity, free to disagree with the administrative enforcement actions if a substantial question is raised or the minimum standard is not met. The District Court reserves the right to prevent the 'arbitrary' exercise of administrative power, by nipping it in the bud." *United States v. Morton Salt Co.*, 338 U.S. 632, 654. (Emphasis added).

h) "It is on this account that our law is deemed certain, and founded in permanent principles, and not dependant on the caprice or will of judges. A more alarming doctrine could not be promulgated by any American Court, than that it

was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles.” Faye Anastasoff vs. United States of America, 8th Circuit Court, 2000.

i) The United States Supreme Court stated... "Any legislative scheme that denies subjects an opportunity to seek judicial review of administrative orders except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties 'so heavy as to prohibit resort to that remedy,' (Oklahoma Operating Co. v. Love, 252 U.S. 331, 333 (1920)), runs afoul of the due process requirements of the Fifth and Fourteenth Amendments." Schulz v. IRS and Anthony Roundtree.

j) Congress wanted third-party record keeper provision of subsec. (a)(3) of this section to be construed broadly in order to give taxpayers every opportunity to voice their privacy interests when those interests are implicated. Fink v. U.S., E.D.Mo.1983, 578 F.Supp. 617. This section permitting intervention of taxpayer when records held by a third-party record keeper are subpoenaed by the Internal Revenue Service should be broadly construed. U. S. v. New York Telephone Co., C.A.2 (N.Y.) 1982, 682 F.2d 313.

It is not now, nor has it ever been the intent of Petitioner to avoid any lawful tax obligation Petitioner might lawfully and Constitutionally be subject to, to the

best of his ability. Petitioner is not attempting to hide anything from lawful inquiry, as he HAS nothing to hide, however he disputes the legal veracity of the Summons, and demands strict proof of IRS jurisdiction and claim over Petitioner consonant with the Federal Rules of Evidence and Civil Procedure.

STATEMENT OF STANDING

Jeffrey T. Maehr, Sui Juris - hereinafter “Petitioner” – has standing to petition this Court to Quash the Summons to Wells Fargo Bank, NA (Herein WFB), for cause, and presents the following as a claim upon which relief may be granted. (See Exhibit B). Petitioner challenges the jurisdiction of the IRS and its standing to be acting upon Petitioner and his private records in issuing its Summons to WFB.

Petitioner is the persons who is identified in the description of the records contained in the Summons on WFB by The Commissioner of Internal Revenue, agent Ginger L. Wray (Herein, IRS); Petitioner claims an interest relating to personal, private information being erroneously summonsed under Color of Law, and presumption, by IRS, and frivolously accepted by WFB.

QUESTIONS AT ISSUE

Petitioner requests the third-party Summons to WFB be Quashed based upon his 5th Amendment rights, the Rules of Civil Procedure, Rules of Evidence, and Case law.

The relevant questions at issue in this instant case deal directly with STANDING of the IRS to have any jurisdiction or authority over Petitioner's personal records or finances, absent proof of same.

If Microsoft or Walmart sent a facially void summons, absent Court order or judgement, to WFB, Respondent WFB certainly would NOT provide said records, and Microsoft or Walmart could not request such records and expect to receive them. This case is no different.

The IRS is acting under administrative rules, and WFB is treating those rules as if they had the power of law behind them. There is NO evidence of record supporting the IRS' actions in filing this Summons for Petitioner's records from a private company.

Standing MUST be proven in order for Summons to have any validity, and this can ONLY be accomplished by the IRS providing direct, specific and lawful/constitutional answers to the following questions which are addressed

following these questions:

a) Does the IRS have lawful jurisdiction over Petitioner or his records apart from Evidence in Fact and of Record of such jurisdiction, or is hearsay and presumption to be accepted just because this is an alleged government agency?

b) Does the IRS have authority to issue “Summons” apart from Petitioner’s right to Due Process of Law under the Fifth Amendment, as provided to any other party with all evidence being properly heard, and having a valid Court judgement or order for said Summons based on the relevant facts?

c) Can the IRS issue a Summons allegedly seeking documents or evidence “relating to the tax liability or the collection of the tax liability” without first proving that “the” liability actually exists under United States law, or has been lawfully adjudicated in a Court of competent jurisdiction, and isn’t merely presumption...i.e. Can the IRS seek records for possible Levy of Petitioner’s account without a proven liability rather than a presumed liability?

d) Does the IRS have the authority to presume a “tax liability” exists against Petitioner who is a “non-resident alien” with respect to the “United States”, as clearly described in the IR Code as NOT having an income tax liability, and is a private citizen of Colorado?

e) Can the IRS make up its own definitions and interpret laws, as to Petitioner being “liable” for “income” tax and how it is to be collected - specifically the 16th Amendment, and lacking lawful definition of what “income” actually is?

f) Can the IRS, which claims to NOT be an agency of the U.S. Government, be acting against Petitioner in his private capacity outside due process?

g) Can the IRS be acting under administrative codes, which are NOT “positive law” and do NOT impact Petitioner in his personal, private capacity?

h) Can the IRS rely on various oft-quoted Court cases claiming “frivolous arguments” in which the actual questions and challenges being called “frivolous” were never actually addressed in those cases, nor evidence presented on those issues in those same Courts?

i) Can the IRS and WFB depend on facially void Summons under Federal Rules of Civil Procedure, Rule 4?

j) Can the IRS persistently ignore relevant challenges despite having been taken to 10 federal Courts including the U.S. Supreme Court, in which it ignored all evidence presented, and standing issues, and was in default in the Supreme Court?

k) Can WFB unconscionable cause a delay or default against Petitioner in the Summons process in his ability to timely file a Motion to Quash with the Court as it did to Petitioner by not providing adequate explanation as to the “Motion to Quash” it requested from him initially?

l) Can WFB rely solely on the IRS for directions as to law and jurisdiction rather than doing lawful due diligence itself as to proper lawful authority and jurisdiction of the IRS to be seeking Petitioner’s personal information as Petitioner NOTICED WFB of with ample documentation evidence via certified mail?

Arguments

In order for any lawful summons to be valid, it must be the result of a lawful Court order or judgement. Any agency in the country which demands third party records MUST be supported by a lawful Court order based on valid evidence and jurisdiction. To date, the IRS has provided no evidence of Record that it has jurisdiction over Petitioner, nor has it provided lawful responses to valid questions based on Supreme Court cites, Congressional Testimony and other documentation.

Petitioner states, and provides evidence for, the fact that the IRS has no jurisdiction over Petitioner, and therefore no authority to be summoning records from WFB, for the following reasons:

1. The IRS denies it is a Federal Agency. (See Court case, Attachment S), so how can it be acting in that capacity against Petitioner if it has no government authority to be requesting personal information from any company Petitioner is privately contracted with without due process of law?

2. Summons is facially void: Federal Rules of Civil Procedure, Rule 4, requires a Judge's signature and stamp of the Court, both of which are lacking in this Summons, (Per Court clerk's affirmation) making it merely an "administrative" action with zero legal effect, among other voiding deficiencies required by F.R.C.P., Rule 4. Ginger L. Wray is acting under the Color of Law. Petitioner would not be able to get away with this violation in seeking someone's banking information without due process, so why is the IRS able to do so, and WFB willing to allow the IRS to do so?

3. IRS has denied Petitioner Due Process of law in not allowing not only a hearing on the merits of its claims, but on conflicting evidence it uses against Petitioner. Petitioner has requested 2-3 times over the last 13 years to have a lawful hearing (his right - see Attachment J) to determine all the issues and to review all evidence presented, and the IRS has failed to respond as required by law, or even acknowledge the requests. Once these requests for a hearing were made, all collection activity should have ceased, and it has not, but has intensified, revealing malicious prosecution and wanton disregard for law.

4. The Internal Revenue Code is not positive law, and is therefore not relevant to Petitioner, a citizen of Colorado. (See Exhibit T).

5. Petitioner is a “non-resident alien” and is not subject to the IRS nor to the income tax, per IRS Code itself. (See Attachment A - based on the successful 1991 Court Case John H. Knox and Lois C. Knox , Case No. SA-89-CA-1308, Consolidated with SA-89-CA-0761 V. The United States, Herman Silguero and Dorothy Silguero).

6. The IRS, nor this honorable Court, can use presumption as any form of evidence to support any action against Petitioner without due process. (See Exhibit H).

7. In the Summons (Exhibit 2), the IRS declares a presumption in stating “the liability” Petitioner allegedly has, without such evidence being in evidence outside presumption or under color of law. Petitioner took the IRS into 10 Federal Courts including the U.S. Supreme Court, (Case #12-6169) presenting ample evidence of a non-liability (not including new evidence herein - Exhibit A) which the IRS and Courts ignored (Cases available). These issues remain to be properly adjudicated under due process laws. The IRS is in default (for over 13 years) in answering these challenges, and this shows extreme bad faith to Petitioner and this Court regarding its alleged actions against Petitioner.

8. The IRS was in default in the U.S. Supreme Court case under FRCP Rule 55 (See Attachment D) for failing to respond to the Petition, yet the IRS continues on with its collection activities despite this. Why the silence?

9. The IRS claims to have jurisdiction in the taxation of Petitioner under the 16th Amendment, but fails to explain this when the U.S. Supreme Court states otherwise. (See Exhibit E), and the IRS has not provided rebuttal to said cases. Even if IRS power to act is under the 16th Amendment (which Petitioner agrees with the U.S. Supreme Court's rulings), there must be lawful detailed explanations as to WHAT is to be taxed, and HOW, or it is under color of law.

10. The IRS claims that "income" is "all that comes" in while it refuses to lawfully define "income" or even provide response to evidence against its claim from Supreme Court cases. (See Exhibit D). The IRS is presuming Petitioner has received something related to "income" which creates an alleged liability in its Summons for his records, yet without evidence.

11. Petitioner responded to the WFB notice letter (See Exhibit W) dated 4-11-15, via fax to 877-399-7261 on or about 4-27-15, and via certified mail on 4-28-15, delivered 5-4-15/See Exhibit K), with his "Motion to Quash" document which WFB stated Petitioner needed to send them before 5-6-15. Petitioner responded with his arguments against the Summons, but never heard back from WFB until 6-2-15 (See

Exhibit G) with a FedEx overnight delivery letter, received June 2, 2015, (See Exhibit WW-1) stating that... "The Internal Revenue Service has stated that there is no basis for your Objection and has challenged us to produce records", and that Petitioner was required to file a "Motion to Quash" with the Court, and he had until Friday, June 5, 2015 to do so.

First, does WFB seriously accept this as "due diligence"? If a thief who is perpetrating a bank robbery is asked by WFB if he is authorized to be robbing their bank, and he tells them, "yes", and any "objections have no basis," would WBS presume this equates to actually having evidence in fact, and was proper due diligence on the laws under its fiduciary obligations?

Second, WFB allowed a month (28 days) to pass by before responding to Petitioner. WFB knew, or should have known, its policy was for a Court-filed "Motion to Quash" and should have NOTICED Petitioner long before it did that his documents were not adequate for WFB.

Allowing only three days in which to prepare this Court-filed Motion to Quash, and have it filed in Denver District Court, which is 5 hours away from Petitioner, is unconscionable. Petitioner has had to investigate procedures for the Court and learned that he must file in Denver, and not locally, by U.S. mail ONLY, (he cannot file electronically), which means the document could not possibly reach Denver by

6-5-15, let alone receive Court-stamped copies back which could be provided to Respondents in a timely manner.

Petitioner Faxed (See Exhibit WW-2) Rebuttal and Request for proper time, (See Exhibit F), but as of 6-5-15, day end, did NOT receive any response. This is an unconscionable delay and allowance of time to respond to this issues. Petitioner is a disabled Vet and cannot travel distances like that in short amounts of time to file this document. In addition, preparing this document required research, and three days allowance and time delay shocks the conscience, and suggests either willful complicity in time delay, or in gross negligence by WFB.

Petitioner has also faxed another NOTICE of intent on filing the Motion to Quash in District Court by U.S. mail (To be mailed on 6-8-15), on 6-5-15, at 4:02 PM. (See Exhibit L). This shows good faith on Petitioner's part to be timely despite the bad faith actions of WFB in this issue.

Conclusion

Petitioner has only the Rule of Law and the Constitution to turn to. Petitioner is expected to know and comply with the law. In order to do that, he must read the law and study all facets of it to determine where he is liable for any lawful tax, and what his rights are. When one comes to find that the Law and Court cites seems to counter the stated explanation for liability against him personally, he can ONLY

resort to the law, Court rulings, and the Constitution, and the Judicial Machinery of the Courts, to find relief and to be lawfully heard.

The relevant questions that address the foundation of whether the IRS has any authority or right to Petitioner's documents, and WFB to have any compulsion to produce said documents outside due process, and under color of law alone, has been entered into evidence. These are foundational legal challenges which have never been lawfully or properly adjudicated, and are ripe for such. Petitioner stands on his constitutional rights of due process of law to be heard and to present all his evidence in a Court of competent jurisdiction, or to have his Motion to Quash GRANTED.

Until the IRS can provide lawful response to each and every challenge, with evidence in fact, and provides Petitioner with his lawful hearing, it has no standing to be issuing acting in ANY capacity with Petitioner. To bypass these constitutional questions is to deprive Petitioner of his rights, and to allow a wrong against him to continue unabated.

It can't be difficult for the IRS to respond to the constitutional challenges if it stands on constitutional and lawful grounds. Why the silence? Silence is ONLY equated with fraud;

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear... This sort of deception will not be tolerated and if this is routine it should be corrected immediately." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932. (Emphasis added)

"Fraud in its elementary common law sense of deceit... includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public... and if he deliberately conceals material information from them he is guilty of fraud." McNally v. U.S., 483 U.S. 350, 371-372, Quoting U.S. v Holzer, 816 F.2d. 304, 307.

"Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth." Morrison v. Coddington, 662 P. 2d. 155, 135 Ariz. 480 (1983).

Silence has continued, and there has been no good faith shown by the IRS in these issues despite it being required to answer clearly and truthfully. (See Exhibit J).

This Court has the power to compel the IRS to perform its lawfully duty by granting this Motion to Quash, and thereby putting the ball back into the IRS hands for proper and ethical actions to finally answer the relevant questions clearly, and give Petitioner his lawful hearing, OR, to cease and desist all actions against Petitioner, his assets, or his private records.

Do Now Request:

Petitioner requests the following:

1. In order that the Petitioner can willfully comply in good faith and with all due alacrity, Petitioner requests this Honorable Court to require the IRS/Wray be ordered to answer all of Petitioners' challenges herein with factual, lawful answers to all questions, point by point, regarding all elements related to IRS authority and jurisdiction, income definition and personal liability, and to do so within 21 days, without frivolous and incomplete responses, considering they are claiming to act within the law and Constitution,

OR,

GRANT Petitioner's Motion to Quash, AND, to ORDER IRS to cease and desist any

and all actions UNTIL said questions and challenges are lawfully and adequately addressed using valid law and constitutional elements.

2. Provide compensation for time and expenses in responding to frivolous IRS Summons actions against Petitioner, to include \$46 cost for filing Motion to Quash, and 40 hours research and preparation time, at \$75 per hour, or whatever this honorable Court deems right and just.

Respectfully submitted and dated this _____ day of June, 2015.

Jeffrey T. Maehr, Sui Juris
924 E. Stollsteimer Rd
Pagosa Springs, CO 81147

Certificate of service:

I, Jeffrey T. Maehr, do hereby certify that I will provide a true and complete copy of the above document with all Attachments and Exhibits to the following parties, immediately upon receiving Court-stamped copies back from the Court via U.S. postal mail;

1. Commissioner of Internal Revenue/Ginger L. Wray, IRS Revenue Agent, via U.S. postal service to 12600 W. Colfax Ave., C-300, Lake wood, Colorado, 80215.

2. Wells Fargo Bank, NA, stamped first page copy via fax to 877-399-7291 as requested in Exhibit WW-1, and complete copy sent U.S. mail to P.O. box 29728, Phoenix, Arizona, 85038.

Jeffrey T. Maehr



WESTERN UNION FINANCIAL SERVICES INC. - ISSUER - Englewood, Colorado

MONEY ORDER

Payable at Wells Fargo Bank Grand Junction - Downtown, N.A., Grand Junction, Colorado



CITY MARKET #445

17-190204864

A 507030 B 060815
T 1801 25
171902048642 L 000445

\$ 46.00

PAY EXACTLY FORTY-SIX DOLLARS AND NO CENTS

PAY TO THE ORDER OF U.S. DIST. CT Colorado

Jeffrey T. Maden
PURCHASER'S SIGNATURE

924 E. STOUT STREET Rd
PAGOSA SPRING, CO 81147

Jeffrey T. Maden
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(Expected Delivery Day)
(Wednesday 06/10/2015)
(USPS Tracking #)
(9505 5110 2308 5159 0421 75)

Insurance	1	\$0.00
(Up to \$50.00 included)		

Total	\$6.70
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Cash	\$20.00
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