UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Entry of Appearance - Pro Se

v.

Case No. 23-1072

I hereby notify the clerk that I am appearing pro se as the

Appellant
(Appellant, Petitioner, Appellee or Respondent)

in this case. All notices regarding the case should be sent to me at the address below. If my mailing address changes, I will promptly notify the clerk in writing of my new address.

Further, in accordance with 10th Cir. R. 46.1, I certify: **(Check one.)**

☑ All parties to this litigation, including parties who are now or have been interested in this litigation, are revealed by the caption on appeal, or

☐ There are parties interested in this litigation that do not appear in the caption for this appeal, and they are listed on the back of this form.

[redacted]
Signature

Jeff Mahr
Name

[redacted]
Mailing Address

[redacted]
City State Zip Code

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jeffrey T. Maehr Petitioner, v. IRS, et al., Respondent	Case No. 23-1072

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case. (This should be a brief summary of the proceedings in the district court.)

The Case 1:22-cv-00830-PAB-NRN Document 15 has multiple relevant issues which have been systematically suppressed, denied and discarded, so Appellant will focus on the single most egregious issue. Appellant sued Appellee for failure to prove assessment debt. Appellee claims adjudication already occurred in U.S. Tax Court, but issues regarding the tax debt were NOT adjudicated beyond failure to provide any evidence to alter the alleged tax debt amount, which was impossible under due process of law. Appellee failed to prove debt, even to not being able to provide any third party summonsed documents upon a FOIA case to obtain proof of debt (District Ct, *Maehr v. United States*, No. 19-cv-03464). The court erred in throwing a blanket ruling by the Tax Court on issues unrelated to the fundamental issue of proof of debt over the actual due process debt evidence which has been challenged from the beginning, and admitted to by Appellee that such evidence for assessment and garnishment indeed does NOT exist, and apparently never did. *Due Process* of the actual evidence was denied, per Statement of Issues attached.

2. Statement of Facts Relevant to the Issues Presented for Review.

The threshold for this appeal rests in the court's own rules: Appellant must "make a "substantial showing of the denial of a constitutional right." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). This generally requires a 'showing that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.' 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000)."

Due process of law is a fundamental constitutional right, and requires "*the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law and in fact is a VIOLATION of due process.*" [Black's Law Dictionary, Sixth Edition, p. 500;]

Appellant has been consistently denied this right under color of law and shrouded under claims of "past adjudication," yet Appellee has never proven adjudication of this proof of debt challenge in any way. The assessment has been upheld under color of law or process which has merely obfuscated the truth of the fraudulent debt.

Any "reasonable jurist" reviewing the actual evidence of record would clearly see the obfuscation in this case and demand due process proof and evidence of debt.

3. Statement of Issues.

a. First Issue: See attached "Statement of Issues"

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

The court failed due process demands on the actual evidence and argument.

5. Did the district court incorrectly decide the facts? If so, what facts?

The court failed to address the actual evidence presented, as did all previous courts, and denied due process rights of Plaintiff.

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

The clear proof presented by Defendant (under FOIA suit - Maehr v. United States, No. 19-cv-03464, U.S. District Court) showed there was no proof of debt, and multiple areas of fraud and malfeasance presented on the record. Due process was clearly violated and is in record and evidence presented by Plaintiff never rebutted in ANY court by Defendant.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

8. What action do you want this court to take in your case? (See below)

9. Do you think the court should hear oral argument in this case? If so, why?

No... the evidence is clear and any jury (denied from the beginning) of Plaintiff's peers would see the issue and bias plainly.

10. Details of clear bias and prejudice by the courts against Plaintiff, and actions under defacto authority.

Plaintiff has provided this court with two previous filings explaining his position in this ongoing case, but there appears to be miscommunication as to the Plaintiff's intent.

Plaintiff herein provides this notice and demand to this court under common law and Continuity of Government (COG) implemented under Presidential Emergency Action

Documents (PEADs) and Devolution([1]) which all Federal, State and Local courts and judges have been noticed of under said laws.

Plaintiff stands in a *dejure*([2]) status and does not recognize the "*foreign service corporation*" which has been usurping *defacto*([3]) authority under color of law and under failure to provide full disclosure to Plaintiff in all past proceedings. Congress members and the Supreme Court have been noticed of the PEADS and Plaintiff stands on his due process rights under the dejure Constitution under the pre-1871 constitution which replaced the empty Congress and dejure Republic.

Although the courts have been acting under a defacto empty Congress and service corporation contract since 1860, when the Congress failed a quorum, dejure Americans can claim all rights and privileges under common law and dejure Republic laws which still exist, and can be acted upon at will, as several states have already proven. Plaintiff has established a record of due process violations in all past court proceedings.([4])

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[1] Devolution. refers to the ongoing continuity of government in times of emergency declarations (which the U.S. has been in for many years now) and investigations into the three branches of government, and other government, corporate and individual entity activities including email, phone, cell phone, office activities and judicial and other documents, and other avenues of communications, and gathering and documenting all unlawful, unconstitutional and otherwise fraudulent or corrupt activities against the American People. (Executive Orders 12148, 13848, 13885, 13912, 13919, 13961; 47 US Code 606, but more specifically 13912 and 10 US Code 1209 and 12406; .Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption. issued on December 21, 2017; Multiple Presidential Emergency Action Documents (PEADs); 800,000+ national sealed indictments; U.S. Space Force; National Security Agency; Uniform Code of Military Justice; Law of War Manual, Chapter 11.5, "Duty of the Occupying Power to Ensure Public Order and Safety," pg. 773.

[2] de jure: De jure is the Latin expression for "by law" or "by right" and is used to describe a practice that exists by right or according to law. In contemporary use, the phrase almost always means "as a matter of law." https://www.law.cornell.edu/wex/de_jure.

[3] de facto: De facto action is an action taken without strict legal authority to do so, but recognized as legally valid nonetheless. The action is considered something that acquires validity based on the fact of its existence and tradition.

[4] + Maehr v. United States, No. CIV.A. 3:osMC3 HEH, 2008 WL 4491596, (E.D. Va. July 10, 2008);
+ Maehr v. United States, No. 3:08-MC-00067-W, 2008 WL 2705605. (W.D.N.C. July 10, 2008);
+ Maehr v. United States, No. MC 08-00018·BB, 2008 WL 4617375, at (D.N.M. Sept. 10, 2008);
+ Maehr v. United States, No. C 08-80218 (N.D. Cal. April 2, 2009);
+ Maehr v. United States, No A-09-CA·097 (W.D. Tex. April 10, 2009);
+ Maehr v. United States, No. 8:08CV190, 2009 WL 2507457, (D. Neb. Aug. 13, 2009);
+ Maehr v. United States, No. CIV. 08-cv-0227 4-LTB· KLM, 2009 WL 1324239, at (D. Colo. May 1, 2009); Denied due process of law on evidence of record.
+Maehr v. Commissioner of Internal Revenue, No. 11·9019, U.S. Ct. Of Appeals, 10th Circuit. (2012);
+ Maehr v. Commissioner of Internal Revenue, No. 12-6169, U.S. Supreme Court (2013);

This court has the authority and the power to make plaintiff whole and does not need any filing or other posturing by Plaintiff to correct the issue and bring justice, or to pay a fee for due process right of redress of grievance. Plaintiff has filed notice of bias and prejudice([5]), and fraud on the court([6]), due process deprivations and government/defendant's fraudulent assessment, but due process was denied Plaintiff. The record is clear.

The record clearly proves the courts and Defendant have been at war with Plaintiff and the dejure Constitution, and acting against the COG and dejure constitutional powers for some time now: Jury denial under the 7th Amendment, denial of Grand Jury, denial of due process clearly of record, denial of assistance of counsel, extortion under color of law, impoverishing Plaintiff, and especially, making a mockery of our system of justice and our constitution and the rule of law.

+ Maehr v. Commissioner, No. CV 15-mc- 00127-JLK-MEH, 2015 WL 5025363, (D. Colo. July 24, 2015), aff'd, 2016 WL 475402 (10th Cir. Feb. 8, 2016);
+ Maehr V. Koskinen, cm et al, No. 16-8625, 2-22-2017, U.S. Supreme Court; Declined to hear issues.
+ Maehr v. Koskinen, No. 16-cv-00512-PAB-MJW, 2018 U.S. Dist. LEXIS 46292, (D. Colo. Mar. 21, 2018).
+Maehr v. Koskinen, etel, No. 16-1204, U.S. Court of Appeals, 10th Circuit (2016);
+ Maehr v. United States, No. 17-1000 T, 137 Fed. Cl. 805, 807, U.S. Court of Federal Claims;
+ Maehr v. United States, No. 18-2286, U.S. Court of Appeals for Fed. Circuit, 2018;
+ Maehr v. United States, No. 18-cv-2273-PAB-NRN - Dismissed
+ Maehr v. United States, No. 18-cv-2948-P AB-NRN - Now pending Appeal (Unconstitutional revoking of passport for alleged assessment debt - (Case of First Impression. Polsinelli Law Firm representing - Denver, Colorado).
+ Maehr v. United States, No. 19-1335, U.S. Court of Appeals; leading to ...
+ Maehr v. United States, No. 19-cv-03464, U.S. District Court; FOIA case for pre-assessment documents used to manufacture assessment against Plaintiff. Defendant was forced to comply with the FOIA request and the Defendant and court found that there were no documents of any kind responsive to Plaintiff's request for pre-assessment documents proving the alleged debt and assessment authority, despite extensive research over app. 18 months.
+ Maehr v. IRS/United States, No. 22-cv-00830-NYW-NRN; Suit for refund of all garnished SS funds taken under fraud and false assessment. Denied due to alleged "already adjudicated" issue.

[5] 1:22-cv-00830-NYW-NRN

[6] "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill. App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). 37 Am Jur 2d at section 8.

Plaintiff demands remedy under all dejure laws, and moves this court to stand for the American people and step between this defacto government structure under color of law and the free American people.

Plaintiff moves this court to remand the case to the District court, for which Plaintiff already paid a fee, waive the Appeal fee, and order the court to adjudicate the actual evidence, with a jury trial.

Plaintiff also requests $250 million in U.S. lawful silver dollars, or equivalent in $10 dollar gold coins, under Article I, section 10 of the Constitution as remedy for malicious abuse, and for establishing a barrier for recidivism by Defendant against Americans which has been ongoing for decades but without accountability.

Will justice be served by this court acting in its Article III capacity, or will the COG and devolution process "alter or abolish" the existing defacto system and hold all rebellion and treason accountable?

Fraud has no statute of limitations once a claim is presented and documented.([7]) Plaintiff has repeatedly raised the fraud claim and yet no due process has been allowed, including discovery, and the courts, and Defendant, have thwarted every attempt for due process of law by Plaintiff. Is this really America, or a conquered people under the rule of tyranny?

[redacted] May 1, 2023

Jeffrey T. Maehr

[7] FRAUD & STATUTE OF LIMITATIONS: If a claim is not brought within the correct limitations period, it is barred. The statute of limitations analysis is not always easy, particularly for fraud/intentional misrepresentation. Fraud has nine elements: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the representation being true; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximately caused injury. Stander v. Szabados, 407 S.W.3d 73, 81 (Mo. Ct. App. 2013).
https://elsterlaw.com/missouri-law-blog/fraud-statute-limitations/

CERTIFICATE OF SERVICE

I, Jeffrey T. Maehr, do herein certify that I have sent a true and complete copy of this Notice and Demand to Ms. Joan I. Oppenheimer, on May 1, 2023, via email to joan.i.oppenheimer@usdoj.gov. Mr. Robert Joseph Wille has provided no contact information although there is an entry of appearance on the docket which Plaintiff did not receive copy of with contact information to serve this filing.

[redacted]

Jeffrey T. Maehr

CERTIFICATE OF COMPLIANCE

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

5-1-23
Date

[redacted]
Signature

1. **Statement of the Issues**

History: Plaintiff has attempted to exercised his right to a Redress of Grievance against the Defendant in approximately 20 past cases on this issue. In all cases, he has been denied this right of due process of law[1] regarding "*the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.*" Defendant consistently made claims of "proof" and "due process" but completely failed to provide evidence of that in the record beyond hearsay[2] and Presumption[3].

This instant case addresses the issue of a fraudulent assessment, and unproven tax liability[4]

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[1] "The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form." *Simon v. Craft*, 182 U.S. 427 (1901); *Pennoyer v. Neff* 96 US. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby... upon the question of life, liberty, or property, (Fifth Amendment-JTM) in its most comprehensive sense; to be heard by testimony or otherwise, **and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law and in fact is a VIOLATION of due process.**" [Black's Law Dictionary, Sixth Edition, p. 500;]. (Emphasis added); The Supreme Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth Amendment also applies to the federal government under the due process clause of the Fifth Amendment. *See, e.g., Bolling v. Sharpe,* 347 U.S. 497, 500 (1954).

[2] "Hearsay Evidence is also known as "derivative," "transmitted," "second hand" or "unoriginal" evidence, and is not actual substantive lawful evidence." Nslui Law of Evidence.

[3] "The power to create [false] presumptions is not a means of escape from constitutional restrictions" *Heiner v. Donnan* 285, US 312 (1932) and *New York Times v. Sullivan* 376 US 254 (1964). "This court has never treated a presumption as any form of evidence." See, e.g., *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) "[A] presumption is not evidence."); See also.: *Del Vecchio v. Bowers*, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence..."); *New York Life Ins. Co. v. Gamer*, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as evidence.") "Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [*Viandis v. Kline* (1973) 412 U.S.441, 449, 93 S.Ct 2230, 2235; *Cleveland Bed, of Ed. v. LaFleur* (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215.

[4] *Boathe v. Terry,* 713 F.2d 1405, at 1414 (1983): "The taxpayer must be liable for the tax. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability"; "The makers of our Constitution ... conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men." Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); see also Washington v. Harper, 494 U.S. 210 (1990)]; "In this case, we hold that the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation. [*Kaiser Aetna v. United States*, 444 U.S. 164 (1979)]."

established by Defendant's own records and testimony in a past FOIA suit([5]), and failure of Defendant to provide even one page of proof of debt([6]). Defendant not only failed to produce Defendant-summonsed third party documents to allegedly prove the assessment([7]), an unknown number of documents were allegedly "charged out," ***twice***,([8]), **lost,** and have never been produced, let alone any of Plaintiff's own bank, or other asset documents to substantiate the assessment when challenged.

In addition, the foundational issue of "income" being at the heart of this controversy, and U.S. Supreme Court standing decisions([9]) being not only ignored, but castigated as frivolous by previous courts. The Supreme Court's never overturned decisions on the issue of "income" defined it clearly([10]), which Defendant and past courts failed to address, and doesn't even have in

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[5] Colorado District Court, *Maehr v. United States*, No. 19-cv-03464, Docket 51, "The IRS's efforts to locate responsive documents," Pgs. 7-9.

[6] "15 U.S. Code § 1692g - Validation of debts - (b); This code clearly states debt collectors must cease all collection activity if the debt is under dispute **and must provide evidence of this debt.**" (Emphasis added). Defendant failed to follow this statute for multiple years and continued with its debt collection despite repeated challenge, with ample evidence, even to injury to Plaintiff in these actions. In addition, Defendant is in multiple violations of 15 U.S. Code § 1692e - False or misleading representations, including, but not limited to, "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt," and (2)(A).

[7] 19-cv-03464, *Maehr v. U.S.*, Motion for Summary Judgment, Doc 51, P. 7, #26: Defendant testifies that even the "original" third party summonsed documents were allegedly "charged out" and even these could not be located, nor were copies made of these alleged original documents. Also, Id, P. 14, #56, "Winters cannot conclude that the third party summons records sought by the Plaintiff have been destroyed because she has not been able to locate anyone with actual knowledge of the third-party summonsed records at this point to know whether they still exist or if they have been destroyed. *(Id.* .. 92)."

Of course, no such "destruction" was authorized under Defendant's own testimony, (*Id.*, P. 11, #44 & #45) and documents should still exist in Plaintiff's record since this assessment and garnishment is still active.

[8] 19-cv-03464, *Maehr v. U.S.*, Motion for Summary Judgment, Doc 51, P. 5, #15, #26, #41; P. 18, top paragraph; P. 19, first paragraph.),

[9] All agencies and courts are bound by the rule that they must follow applicable Supreme Court precedent unless and until it is overruled by the Supreme Court. *Agostini v. Felton*, 521 U.S. 203, 237 (1997); *Internal Revenue Manual:* 4.10. 7.2.9.8 (01-01-2006) Importance of Court Decisions; 1. Decisions made at various levels of the court's system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position. 2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions.

[10] 1913 Congressional Record, P.3 843, 3844; Senator Albert B. Cummins: "The word 'income' has a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all of the courts of this country ... If we could call anything that we pleased income, we could obliterate all the distinction between income and principal. The Congress can not affect the meaning of the word 'income' by any legislation whatsoever..."; *Conner v. United States,* 303 F. Supp. 1187 (1969) P. 1191: 47 C.J.S., Internal Revenue 98, P. 226: "(2] Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was

their own code([11]), and has refused to clarify the constitutional conflict that has been created over many past cases.

Plaintiff repeatedly requested, and was repeatedly denied, his right to a trial by jury under the 7th Amendment([12]), especially where his social security was being garnished for several years with

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true when the 16th amendment became effective, it was true at the time of the decision in *Eisner v. Macomber;* it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income. [1] ... It [income] is not synonymous with receipts."

Doyle v. Mitchell Brother, Co., 247 U S 179 (1918)"We must reject in this case ... the broad contention submitted in behalf of the Government that all receipts, everything that comes in are income within the proper definition of the term 'income' ... "; *U.S. v. Balard* 535, 575 F. 2D 400 (1976); (See also *Oliver v. Halsteacl* 196 VA 992; 86 S.E. Rep. 2 D 858)"...'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. There is a clear distinction between 'profit' and 'wages' or 'compensation for labor.' Compensation for labor cannot be regarded as profit within the meaning of the law ... The word profit is a different thing altogether from mere compensation for labor ... The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who performed the services ... is without support either in the language of the Act or in the decisions of the courts construing it and is directly opposed to provisions of the Act and to Regulations of the Treasury Department ... ";

U.S.C.A. Const.Am 16 - "There must be gain before there is 'income' within the 16th Amendment." Gov. A.E. Wilson on the Income Tax (16) Amendment, *New York Times,* Part 5, P. 13, February 26, 1911"The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system." *Edwards v. Keith,* 231 F. 110 (2nd Cir. 1916) "The statute and the statute alone determines what is income to be taxed. It taxes only income 'derived' from many different sources; one does not 'derive income' by rendering services and charging for them."

Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937] "Income within the meaning of the Sixteenth Amendment and Revenue Act, means 'gains' .. . and in such connection 'gain' means profit ... proceeding from property, severed from capital, however invested or employed and coming in, received or drawn by the taxpayer, for his separate use, benefit and disposal ...*Merchants Loan & Trust Co. v. Smietanka,* 2 2 5U .S. 50 9, 518, 519. (1923); "Income, as defined by the Supreme Court means, 'gains and profits' as a result of corporate activity and 'profit gained through the sale or conversion of capital assets.'" Also see 399. *Doyle* v. *Mitchell Bros. Co.* 247 U.S. 1 79, *Eisner v. Macomher252* U.S. 189, *Evans v. Gore253* U.S. 245, *Summers v. Earth Island Institute,* No. 07-463 [U.S., March 3, 2009] [citing *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 541 {1986}];

Southern Pacific v. Lowe, U.S. 247 F. 330. (1918)" ... [I]ncome; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income.'; *Lucas v. Earl,* 281 U.S. 111 (1930) "It has to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income **derived from** salaries, wages, or compensation for personal services." **(Emphasis added - Many more cases could be cited).**

[11] *U.S. v. Balard* 535, 575 F. 2D 400 (1976); (See also *Oliver v. Halstead* 196 VA 992; 86 S.E. Rep. 2 D 858) "The general term 'income' is not defined in the Internal Revenue Code ..."

[12]Amendment VII: In suits at common law, **where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved**... (Emphasis added). Plaintiff fully engages the common law court jurisdiction preserving this right for a jury of his peers, rightfully, in the county of his abode and living for the past 21 years. **(*Common law.*** As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the

no proof of debt or evidence of record to substantiate the original assessment.

Defendant has the burden of *production and persuasion*([13]) which they failed to meet, and such obfuscation of records as demonstrated in the foia case, and ongoing distractions in the courts was soundly condemned by the U.S. Supreme Court([14]) many years ago, yet persists to this day.

The lower court had the power to address the erroneous rulings([15]) where evidence clearly supports such rulings. As previously argued, (See Doc for case 1:22-cv-00830-NYW-NRN, at 1., P. 16) if the situation was reversed, such "evidence" as provided by Defendant in support of the assessment would be discarded immediately([16]).

Plaintiff also filed for Grand Jury investigation([17]) regarding the clear improprieties by

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judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution. People v. Rehman, 253 C.A.2d 119, 61 Cal. Rptr. 65, 85. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. Bishop v. U. S., D.C.Tex., 334 F.Supp. 415,418." (Black's Law Dictionary, 6th Edition).

[13] "Burden of Proof: The responsibility of producing sufficient evidence in support of a fact or issue and favorably persuading the trier of fact (as a judge or jury) regarding that fact or issue... NOTE: The legal concept of the burden of proof encompasses both the **burdens of production and persuasion.**" FindLaw Legal Dictionary. Source: Merriam-Webster's Dictionary of Law ©1996. (Emphasis added).

[14] "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." *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.

[15] The judge's findings must stand unless "clearly erroneous." Fed. Rules Civ. Proc., 52 (a). A finding is 'clearly erroneous' when although there is evidence to support it, **the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.** *United States v. United States Gypsum Co.*, 333 U.S. 364, 395. Rule 52, findings and conclusions." (Emphasis added).

[16] If these roles were reversed, and Plaintiff was being challenged by Defendant on Plaintiff's tax filing deductions, expenses, or other means of reducing any tax burden, Defendant would not accept mere arbitrary claims, presumptions or Plaintiff-manufactured and computer-generated records without supporting certifiable or self-authenticating proof of expenses, such as bank statements, third party billings, expense receipts, proof of dependants, etc. Defendant would surely refuse such flimsy arbitrary proof for any deductions that Plaintiff was trying to put forward as evidence. Plaintiff should have equal protection under the law, and Defendant should be required to produce evidence to substantiate Plaintiff's assessment, or correct the clear wrong.

[17] In *United States* v. *John H. Williams, Jr.*, 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352), the court stated... "...the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not. *United States* v. *R. Enterprises*, 498 U.S. 111 S.Ct. 722, 726, 112 L.Ed.2d 795 (1991) (quoting *United States* v. *Morton Salt Co.*, 338 U.S. 632, 642-643, 70 S.Ct. 357, 364, 94 L.Ed. 401 (1950))"; "This

Defendant, and was denied. He also filed a notice of bias and prejudice, with evidence, and this was ignored.

The main argument Defendant's are using is that the issues raised in this instant case have already been adjudicated, repeated over and over, ad nauseam, but without actual proof of such adjudication based on actual evidence or record.

Defendant uses previous Tax court case (Docket No. 10758-11) as the bar for any future litigation claiming that the Tax court adjudicated the assessment issue. The Tax court had no such evidence before it and could not have "adjudicated" the issue as Defendant claims. Such ruling is void on its face and has no lawful effect.

The Tax Court's ORDER stated:

> "ORDERED that respondent's Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted, filed June 21,2011, is granted, and this case is dismissed upon the stated ground."

This was denied by Plaintiff, as the alleged "Failure to State a Claim upon which Relief Can Be Granted" is not a sufficient reason for denial, (See Exhibit A) and was so argued, especially when alleged "claim" was impossible to provide as the court and Defendant required. Further, the Tax Court ruled that the Plaintiff was "liable" for the alleged deficiencies but without due process on the clear "claims" made, and without any proof of debt being in evidences on this issue. This is a clear failure of due process, especially when the entire debt was challenged from the beginning, but all evidence ignored and not defended against.

Other raised issues in the past, such as Plaintiff's Individual Master File (IMF) being fraudulently altered by Defendant were never adjudicated, creating an alleged liability against him. Bias and prejudice against Plaintiff and the actual evidence being suppressed stands until proven otherwise.

Court has, of course, long recognized that the grand jury has wide latitude to investigate violations of federal law as it deems appropriate..." (Complete motion and Memorandum of Law for Grand Jury summons is available to be filed if necessary).

If Defendant had even a modicum of good faith or interest in the truth, justice and correcting its aberrant misplaced behavior, they should want the evidence, and would not object to or continue to interfere with the actual evidence from the Supreme Court and many other resources proving the ongoing unlawful activities likely unknown by the vast majority of Defendant employees, and the courts across our Republic. If Defendant believes in and is right and lawful in its administrative application of its code and laws, it would not object to a Grand Jury investigation and would WANT to assure the public that what it is doing IS lawful and just. Defendant appears to agree with this premise in the IRS Document 9300, Catalog # 21066S, which has claims of ethical principles by Defendant: "Ten Core Ethical Principles; Honesty. Integrity/Principled. Promise Keeping. Loyalty. Fairness. Caring and Concern for Others. Respect for Others. Civic Duty. Pursuit of Excellence. Personal Responsibility / Accountability.") This 12 year history pretty much destroys any aspect of these "principles" claimed by Defendant.)

EXHIBIT A

ALLEGED FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

"The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson* (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; *Seymour v. Union News Company*, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." *U.S. v. White County Bridge Commission* (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

"A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, particularly is this true where a defendant is not represented by counsel, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice. *Burt v. City of New York*, 2Cir., (1946) 156 F.2d 791.

Accordingly, the complaint will not be dismissed for insufficiency. Since the Federal Courts are courts of limited jurisdiction, a plaintiff must always show in his complaint the grounds upon which that jurisdiction depends. " *Stein v. Brotherhood of Painters, Decorators, and Paper Hangers of America, Dccdj* (1950), 11 F.R.D. 153.

"A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." *John Edward Crockard v. Publishers, Saturday Evening Post Magazine of Philadelphia, Pa* (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do substantial justice." *Dioguardi v. Durning*, 2 CIR., (1944) 139 F2d 774.

"Counterclaims will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." *Lynn vs Valentine v. Levy*, 23 Fr 46, 19 FDR, DSCDNY (1956)