## D. STATEMENT OF CLAIMS

### CLAIM ONE : Frivolous, Erroneous and Arbitrary Tax Assessment and Garnishment against Plaintiff by Defendant for years 2003-2006, and Subsequent Passport Revocation.

Plaintiff comes before this court with this complaint of a frivolous[1], erroneous[2] and arbitrary[3] tax assessment, garnishment and passport revocation laid against Plaintiff for the years 2003-2006 for which he has repeatedly sought evidence and responses from the Defendant, to no avail. Despite approximately 19 previous court cases on the assessment over the last 10+ years, and countless requests for debt verification, Defendant has failed to lawfully support its assessment and garnishment with any credible evidence whatsoever. Plaintiff now has clear Defendant-provided court testimony, and other evidence in support of his complaint as provided herein under due process of law[4].

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[1] **Frivolous**: A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense." *Liebowitz v. Aimexco Inc*., Colo.App., 701 P.2d 140, 142; An answer or plea is called 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading...*Ervin v. Lowery*, 64 N. C. 321; *Strong v. Sproul*, 53 N. Y. 4991. *Gray v. Gidiere*, 4 Strob. (S. C.) 442; *Peacock v. Williams* (C. C.) 1l0 Fed. 910; *Liebowitz v. Aimexco Inc*., Colo.App., 70l p.2d 140, 142. Black's Law Dictionary, 6th Edition.

[2] **Erroneous**: Involving error; deviating from the law. This term is not generally used as designating a corrupt or evil act. **Erroneous assessment**: Refers to an assessment that deviates from the law and is therefore invalid... Black's Law Dictionary, 6th Edition.

[3] **Arbitrary**:.. Not based on reason or evidence. Done without concern for what is fair or right. Existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will. Based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something. Not restrained or limited in the exercise of power. Ruling by absolute authority. Marked by or resulting from the unrestrained and often tyrannical exercise of power. Merriam Webster Dictionary;

In an unreasonable manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; Depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; *Corneil v. Swisher County*, Tex.Civ.App., 78 S.W.2d 1072, 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law, *U. S. v. Lotempio*, D.C. N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standard. Willful and unreasoning action, without consideration and regard for facts and circumstances presented. In re West Laramie, Wyo., 457 P.2d 498, 502. Ordinarily, "arbitrary" is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in the nature of things. *Huey v. Davis*, Tex.Civ.App., 556 S.W.2d 860, 865. Black's Law Dictionary, 6th Edition.

[4] "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

A jury trial is requested under the 7th Amendment[5], and Plaintiff also requests attorney assignment under D.C.COLO.LAttyR 15 CIVIL PRO BONO REPRESENTATION (E)(1)(c) , ONLY **if the court believes Plaintiff would not get justice in this case on his own with this filing and evidence of record**.[6]

## HISTORY AND DISCUSSION

1. Beginning in approximately 2003 and on, Plaintiff made multiple and substantial rightful inquiries[7] into Defendant's taxing authority and claims on Plaintiff's alleged assets, and requesting basic definitions and statute/law clarifications, as well as explanations for U.S. Supreme Court standing decisions[8] that conflicted with Defendant's tax claims against Plaintiff. This was met with evasion, disregard of U.S. Supreme Court decisions and plain dismissal of Plaintiff's rights under due process for Redress of Grievance guaranteed by the U.S.

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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).

[5]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 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).

[6] Plaintiff saved for this suit over a four month span from his limited veteran's disability monthly compensation and cannot possibly afford an attorney to represent his rights.

[7] "[T]he citizen … has the right to come to the seat of government to assert any claim he may have upon that government..." *Crandall v. Nevada*, 73 U.S. at 43-44.

[8] 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 (0l-0l-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.

Constitution under the First Amendment[9] and other authorities.[10] The Supreme Court clearly upheld the right for redress which has been repeatedly denied Plaintiff by Defendant, even to the point of refusing, in writing, to answer any such challenging questions which it is required to answer. (See footnotes #7 & #38, 2nd paragraph). Defendant's multiple letters to Plaintiff declaring this clear refusal to answer questions are available if needed.

2. Defendant subsequently filed seven, third party summons on various business entities (banks, mortgage company, PayPal, online vendors, etc.) which Plaintiff was involved with at the time. Plaintiff challenged these with Motions to Quash. (See list of cases in Exhibit B). In these Motions to Quash, Plaintiff provided clear debt challenges, and challenges from Supreme Court standing (and never overturned) precedent[11] that countered Defendant's ongoing taxing claims against Plaintiff. Plaintiff's evidence was never adjudicated by the courts, nor answered by Defendant, and all seven Motions to Quash were dismissed.

3. Defendant subsequently filed an assessment, in March 2016, against Plaintiff for alleged back taxes due for the arbitrary four years of 2003 through 2006, (the same time frame Plaintiff was initially challenging Defendant's refusal to answer questions) claiming Plaintiff, (a disabled Navy Veteran since 1973[12] and only having part-time work since his discharge in 1973), made approximately one million ($1,000,000) dollars over those four years. (Figure undisputed by Defendant in any past court case). Defendant initially claimed a tax debt of approximately $309,000 against Plaintiff.[13] Defendant also "Certified" to the Department of State (DOS) that this tax assessment debt was valid and the DOS revoked Plaintiff's passport preventing him from international (work or other) travel, a denied right which was petitioned up to the U.S. Supreme Court, and which court recently denied certiorari petition filed by pro bono counsel referred by this court. (*Please see #18-25 below for recently obtained information on*

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[9] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the Government for a redress of grievances**." First Amendment. (Emphasis added)

[10] Taxpayer Bill of Rights, IRS Publication 1, #1, #2, #3, #4, #10, primarily - (See attached); Also, *Gregory v. Helvering,* 293 U.S. 465 (1935): "The legal right of the taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits, cannot be doubted."

[11] "'Precedent' as a 'rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases.'" Black's Law Dictionary, p. 1059 (5th ed. 1979).

[12] Plaintiff received a disabling back injury while on Navy duty in 1972 which led to his medical discharge, the injury being a "disqualifying condition." Plaintiff had no full-time work since his discharge in 1973 up to 2005 when he ceased part time employment due to his injury as government social security records clearly allude to. (See Exhibit C).

[13] This initial assessment was later arbitrarily changed to approximately $255,000 by Defendant when suits were filed, with no explanation, despite Plaintiff pointing this out and asking for explanation. The amount garnished by Defendant from social security from February 2016 to the July 16, 2018 date on the Defendant's "billing summary," approximately $20,300, could not possibly account for the approximately $54,000 decrease in the claimed amount due. (See Exhibits A-1 & A-2). This, too, is an arbitrarily reduced figure with no basis or explanation provided for this change.

*Defendant's ongoing questionable activities*.)

4. Plaintiff continued his quest for constitutional answers and debt verification via further court actions (See Exhibit B) for proof that Defendant had lawful justification and evidence to assess him as upheld without evidence in previous court cases, but is herein challenged**([14]),** especially since Plaintiff never had such presumed asset records or work history. Defendant failed to ever provide demanded tangible "pre-assessment"**([15])** document evidence that would substantiate the assessment. Under due process of law ( Footnote #4), Plaintiff has the Constitutional right of equal protection under the law to not only challenge (See Footnote #10) this alleged debt, but to also demand "relevant evidence" in fact under Rule 401 of Federal Rules of Evidence**([16])** which was never provided by Defendant in any past correspondence or court cases. Defendant has provided no probative evidence that could in any way substantiate its assessment of Plaintiff and subsequent garnishment of ALL his social security payments, contrary to standing law**([17])**, or the revocation of Plaintiff's passport. Defendant also threatened all Plaintiff's veterans disability payments in past case filing responses due to this erroneous assessment, also contrary to standing law**([18]).** Such threats obviously directly imperil any potential property Plaintiff has been and is being prevented from seeking under constant threat of attack and taking by Defendant. This entire scheme impoverished, and continues to impoverish, (26 U.S.C. §6342 (a)(1)(D)) Plaintiff, and prevents any hope of escaping it for life if left

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[14] 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. (A "mistake" is the bare minimum of what has occurred to Plaintiff.) (Emphasis added).

[15] By "pre-assessment," Plaintiff means any actual, personal, or third party summonsed bank or other documents regarding Plaintiff's assets which existed prior to the assessment which were ever obtained and utilized by Defendant to manufacture Defendant's in-house documents from which it provided as over the years purporting to be "evidence" of the alleged debt, assessment, and garnishment against Plaintiff and subsequent revocation of Plaintiff's U.S. passport.

[16] Rule 401. Test for Relevant Evidence. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

[17] Under IRS Publication 594, only "up to 15%" of social security can be garnished: "certain federal payments may be systemically seized through the Federal Payment Levy Program in order to pay your tax debt. Under this program, we can generally seize up to 15% of your federal payments ...(up to 100% of payments due to a vendor for property, goods or services sold or leased to the federal government)." Also, 26 U.S.C. 6331(h) - "Continuing levy on certain payments (1) In general; If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall ***attach to up to 15 percent of any specified payment due to the taxpayer***." (Emphasis added). Not every penny of his living.

[18] *Porter v. Aetna Cas. & Sur. Co*., 370 U.S. 159 (1962). (As argued in U.S. District Court, Colorado, 1:16-cv-00512-PAB-MJB). The Supreme Court prohibited the taking of ANY military disability compensation before OR after receipt by the Veteran, which Defendant claimed to be able to do AFTER deposit using an illogical premise that once it is received by veteran it is no longer "due" and therefore is attachable.

unchecked and unproven by substantive evidence.

5. Because Defendant refused to ever provided any original, pre-assessment documents as proof of debt**([19])** for the assessment, and Plaintiff believing that *discovery* in a previous case was potentially going to be denied, (which it was), Plaintiff filed a Freedom of Information Act (FOIA) requests (eventually 3 in total) to Defendant for any and all pre-assessment documents that would verify and prove taxable assets Plaintiff had for years 2003-2006 that would authorize assessment and subsequent garnishment of ALL Plaintiff's social security for approximately 54 months,**([20])** or potentially attack any other assets belonging to or obtained by Plaintiff.

6. Defendant failed to lawfully or timely respond to Plaintiff's above referenced multiple FOIA requests, so Plaintiff filed suit to obtain said documents and proof of debt. (*Maehr v. United States*, No. 19-cv-03464, U.S. District Court, Colorado). In this case, this court compelled the Defendant to respond. Defendant evaded directly providing the requested "pre-assessment" documents, so the court compelled the Defendant to search for the requested documents. Defendant eventually, after allegedly 18 months of a thorough searching of records and utilizing at least 14 IRS agents, provided ONLY in-house, arbitrarily-manufactured documents alleging a tax debt but without supporting pre-assessment asset evidence. Defendant could not provide a single personal bank statement, third party summonsed document, (which included multiple banks and other financial companies) or any other financial evidence**([21])** of Plaintiff's assets that could in any way support a taxable activity or asset, or any contractual

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[19] "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).

[20] It must be noted that Plaintiff's entire social security payment (approximately $700 per month since he started receiving it in August, 2015) has been garnished by Defendant since February, 2016, (See also Footnote #43) up until Plaintiff suspended (as of Sept, 2020) receiving said payments as a matter of right till his 70th Birthday, at which time they are to resume. Had Plaintiff made one million dollars ($1,000,000) over the course of the four years alleged, his social security payment would be far greater than what is now established by the Social Security Administration. (See Exhibit C). Plaintiff contacted the Social Security Administration regarding obtaining certified copies of this data, but was told it would be a minimum of 3 months before any response could occur, and likely much longer due to Covid 19 staffing issues. Perhaps the court could order a response that would greatly speed this up for the sake of justice if the court needs the documents to be certified. The SSA website data corroborates the wage history as shown in Exhibit C, and can be provided via live stream video conference if necessary.

In effect, Defendant has denied Plaintiff the use of his earned social security for the garnished years, causing financial and emotional damages, and denied any business opportunity international travel available by certifying an erroneous assessment leading to revocation of Plaintiff's passport.

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

agreement (any such claimed agreement is denied by Plaintiff **([22])**) giving Defendant jurisdiction over Plaintiff or his assets, or which could authorize or justify Defendant's garnishment of all Plaintiff's social security for 54 months, and authorize certification for revocation of Plaintiff's passport.

7. The failure of Defendant to provide even a single page of evidence of debt, along with other very troubling Defendant-substantiated failures to maintain records as clearly established in a previous case**([23]),** (also see P. 10, #14 below), is something which any fair and impartial jury would certainly find very troubling and suspicious, and of course, unacceptable.

8. The Defendant has the burden of proof, *production and persuasion***([24])** where it is challenged on its actions, and especially where no evidence in support of its actions has been forthcoming. Defendant cannot arbitrarily manufacture internal documents to substantiate an assessment against Plaintiff where cognizable and relevant personal records of any kind are lacking and cannot be produced, as in this case, (and likely in cases involving similarly situated Americans). However, Defendant, in very bad faith, ***repeatedly and knowingly*** claimed Plaintiff had a tax liability**([25])** for 6 years, even in the face of repeated rebuttal and evidence, yet without actual evidence-in-fact known by anyone with firsthand**([26])** knowledge of even the smallest

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[22] 37 Am Jur 2d at section 8 states, in part: "Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments." If any contract or other alleged binding "agreement" is presumed or otherwise engaged in against Plaintiff, he denies knowing of any such agreement or scheme or alleged "law" being partially or fully disclosed to him in any form, and denies any such agreement or jurisdiction OVER Plaintiff under this and Constitutional rule for a private human being, and willingly surrenders no common law and God given rights of any kind herein under presumed conclusions or any ***color of law*** actions. (18 U.S.C. §242, §245, 42 U.S.C. 1983).

[23] *Maehr v United States*, 19-cv-03464, Docket 51, P.12, #45.

[24] "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).

[25] *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)]."

[26] "Firsthand knowledge. Information or knowledge gleaned directly from its source; *e.g.* eyewitness to a homicide. A lay witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Federal Rules Evid. 602. If testimony purports to be based on observed facts but is in fact mere repetition of the statement of another, the proper objection is lack of first-hand knowledge." Black's Law Dictionary, 6th Edition. "Firsthand knowledge are facts within the personal knowledge of the expert." *State v. Burrell*, 2006 Minn. App. Unpub. LEXIS 1117 (Minn. Ct. App. 2006).

aspect of any actual pre-assessment documents, and failed to respond in 19 court cases. This is unconscionable and such behavior was previously strongly condemned by the U.S. Supreme Court.**([27])** Plaintiff believes all Defendant's actions against Plaintiff were purely malicious and vindictive, and unethical, which pattern has been clearly established per footnote #27.

9. The Defendant has NO lawful or constitutional basis for the arbitrary manufacturing of records and the subsequent assessment and garnishment of any American without having the burden of proving said assessment, especially when challenged. Defendant must be able to prove its authority and jurisdiction to be taxing Plaintiff, especially in claiming Plaintiff had any actual taxable assets without proof of debt or proof that the assessment was on lawfully defined "income" as only defined by the U.S. Supreme Court.**([28])** As a matter of fact, Defendant has

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[27] "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.

[28] 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 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,

failed to even provide any lawful definition of "income" at all, despite repeated requests for this. The IR Code itself does not define income,**([29])** so this further clouds exactly "*what*" Defendant taxed as "income" against Plaintiff for the alleged tax years of 2003-2006, if anything, or *why* he was taxed. Defendant has not bothered showing any rebuttal evidence to counter the U.S. Supreme Court's original plain language and definitions on "income," and exactly how it is "derived" by, or even applies to, any activity which Plaintiff has engaged in. No such proof has been forthcoming, and certainly no financial receipts, bank statements, or asset records have been shown to validate any assessment against Plaintiff. This further exacerbates the gross lack of evidence supporting the assessment and garnishment by Defendant against Plaintiff, and leans heavily toward granting Plaintiff's remedy.**([30])**

10. Plaintiff provided the Social Security Administration's exculpatory evidence documents (Exhibit C) mailed to Plaintiff showing that the Defendant's alleged assets claimed for said years were never documented, and Defendant failed to provide said evidence that would supercede said exculpatory documents or disprove their validity. Plaintiff has no bank or other records of such assets, and never has had, showing that there was any taxable "income" in Plaintiff's possession or received at any time in 2003-2006, or any other time for that matter.

11. Presumption**([31])** is no form of evidence, and when Defendant's assessment authority

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*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).

[29] *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 ..."

[30] *Gould v. Gould,* 245 U.S. 151; "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as **to embrace matters not specifically pointed out**. **In case of doubt, they are construed most strongly against the government and in favor of the citizen**." (See also *Eidman* v. *Martinez ,* 184 U.S. 578, 583; *United States v. Wigglesworth,* 2 Story, 369, *374; Mutual Benefit Life Ins. Co.* v. *Herold,* 198 F. 199, 201, aff'd 201 F. 918; *Parkview Bldg. Assn.* v. *Herold,* 203 F. 876, 880; *Mutual Trust Co.* v. *Miller,* 177 N.Y. 51, 57.n (Id at p. 265, ).. (Emphasis added).

[31] "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.*

against Plaintiff is rebutted, it MUST be proven under due process laws, (Footnote #4) or it is merely a ***Fiction of Law***[32]. All Defendant's in-house manufactured evidence for assessment is hearsay[33] and arbitrary, and lacks any testimony from anyone having firsthand knowledge of ANY aspect of the pre-assessment documents,[34] Plaintiff liability for alleged assets, or work history of Plaintiff that would support said assessment, or support the in-house manufactured documents provided by Defendant as alleged "evidence of debt."

12. This court supports the previous court admissions provided by Defendant as potentially being of use in this suit. The court stated in No. 19-cv-03464 "REPORT AND RECOMMENDATION," Document 64, P. 14;

> "To the extent Mr. Maehr thinks they may be useful in other proceedings, the factual statements in the IRS's affidavits and in the IRS's briefs **may potentially serve as admissions by the IRS**. *See, e.g.,* Dkt. #51 at 18 (IRS's Motion for Summary Judgment) ("The IRS has produced all responsive and non-exempt documents that it has located in connection with the Plaintiff's FOIA requests.") But Mr. Maehr is not entitled to a declaration by the Court merely repeating the **facts or conclusions underlying the IRS's admissions**." (Emphasis added).

The "facts or conclusions underlying the IRS's admissions" in the above referenced case paint a clear picture which is being referenced herein.

13. All records related to Plaintiffs "active" and unresolved assessment and alleged debt should have been retained by Defendant, if they existed at all, per Defendant's own testimony. (*Maehr v. U.S.*, 19-cv-03464, Motion for Summary Judgment, P. 11, #44 & #45). This corroborates that all Plaintiffs records allegedly "were being saved" (under Defendant's own rules), and yet no original pre-assessment or third party summonsed records are in evidence or have been provided by Defendant that were responsive to Plaintiffs FOIA request for proof of debt, and obviously were NOT saved "if" they existed. This defies rational accounting practices.

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*LaFleur* (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215.

[32] **Fiction of law.** An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption [PRESUMPTION], for purposes of justice, of a fact that does not or may not exist. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. *Ryan v. Motor Credit Co*., 30 N.J.Eq. 531, 23 A.2d. 607, 621. Black's Law Dictionary, Sixth Edition, p. 276]

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

[34] Not only are all pre-assessment bank and other records missing, and no witness with any firsthand knowledge of any aspect of the manufacture of in-house documents allegedly supporting the assessment provided, Plaintiff's own firsthand knowledge of his work history and asset record has never been refuted, and the government's own social security records verify Plaintiff's firsthand knowledge. Bank or other third party records showing a 4 year, approximately one million dollar very unusual asset stream would not completely disappear from existence. Plaintiff's lifestyle is evidence enough of living below the poverty level and certainly not having received that kind of money in the past.

14. In addition, Defendant, for some unknown reason not yet explained, actually testifies it allegedly authorized unidentified**([35])** records to be "charged out," ***twice***,**([36])** allegedly to other Defendant parties. Defendant also failed to make copies of these records and then allegedly lost track of these charged-out documents and allegedly said documents were never returned to the original source. This strains credibility and the imagination to believe that any of Plaintiff's personal pre-assessment records alleging substantiation of assessment and garnishment ever existed in Defendant's possession, or such pre-assessment asset records could ever have been obtained by Defendant, especially when Plaintiff also had no such records or work history in his own records. Either that, or said documents were "charged-out" of existence due to their exculpatory and inculpatory nature. This calls into question why said documents would be purposefully separated, or "charged-out" and then "lost," independent from all in-house manufactured documents readily available in the record, once Plaintiff challenged the entire assessment scheme. Prima facie evidence of *Obstruction of Justice*...**([37])** This is more evidence for the need for a Grand Jury investigation.**([38])**

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[35] 19-cv-03464, Motion for Summary Judgment, P. 12, #47 - "Winters does not know the content of these documents or if they are even responsive to the First, Second, or Third FOIA Requests. The only thing that Winters does know is that they are documents related to the Plaintiffs tax information for the tax years 2003-2005. ad J 78)" (Plaintiff would point the jury to the fact that no evidence has been of record to support the alleged knowledge that the "documents related to the Plaintiffs tax information for the tax years 2003-2005."

This is hearsay as well, and begs the questions, "What evidence is there that those alleged documents had any relation to the alleged tax years 2003-2005, especially without year 2006 documents," and "why would those documents be any different than what the Defendant has as in-house records and has already provided?"

[36] 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.),

[37] 18 U.S. Code Chapter 73 - OBSTRUCTION OF JUSTICE - Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C.A. §§ 1501-1517). Two types of cases arise under the Omnibus Clause involving Obstruction of Justice: The concealment, alteration, or destruction of documents; and the encouraging or rendering of false testimony. Actual obstruction is not needed as an element of proof to sustain a conviction. The Defendant's endeavor to obstruct justice is sufficient. "Endeavor" has been defined by the courts as an effort to accomplish the purpose the statute was enacted to prevent. **The courts have consistently held that "endeavor" constitutes a lesser threshold of purposeful activity than a criminal "attempt."** Federal obstruction of justice statutes have been used to prosecute government officials who have **sought to prevent the disclosure of damaging information**. 18 U.S. Code § 4 - Misprision of felony. Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same to some judge** or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both. See also 42 U.S.C. § 242 & § 245; 42 U.S.C. 1983. (Emphasis added).

[38] 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 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). (See Exhibit F - Supreme Court Grand Jury and statute evidence) continued>>>

15. In addition to that, the very fact that not even a single page of the seven litigated, third party Defendant-summonsed documents are of record or have ever been disclosed,**([39])** and which are not exempt and would be exculpatory for Plaintiff, (and inculpatory for Defendant) should raise eyebrows on this entire assessment case. This provides further prima facie evidence that a Grand Jury should be investigating this entire approximately 10 year history to assure justice is accomplished for all Americans similarly situated. This court can act on this evidence on its own in convening a Grand Jury. Many red flags and smoking guns are apparent to create serious questions on these issues.

16. Plaintiff previously filed another FOIA request, dated January 2, 2020, to the Defendant regarding all costs to continually defend against the 19+ suits seeking redress. (Defendant FOIA Case # 2021-02113). According to the documents received in response, Defendant fought Plaintiff's attempts to defend his assets at the cost of approximately $42,700, but likely much higher as all records were not provided. (FOIA response, which was considerably delayed multiple times, is available for evidence if needed, but too large to include herein. See Exhibit H for cover letter). Said amount begs the question as to why Defendant would defend so hard when it could have easily answered the essential questions and provided the established facts that no "pre-assessment" documents exist, and saved the taxpayers such costs beginning 10 years ago, unless there has always been something to suppress involving that information. This is more prima facie evidence for the need for a Grand Jury investigation.

17. In addition, Plaintiff has never been charged for this approximately $42,000 alleged costs for just attorney fees for defending against the previous first 17 cases over the last 10 years (Exhibits B1 & B2, not including three more cases since) as received from Defendant via the above referenced FOIA. This is prima facie evidence of possible willful knowledge of the frivolous, erroneous and arbitrary nature of this assessment, and Defendant's potential illegal and unconstitutional attack against Plaintiff, and which is ripe for a Grand Jury investigation.

18. ***Most recent developments***: On the same day of the U.S. Supreme Court's conference

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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 10 year history pretty much destroys any aspect of these "principles" claimed by Defendant.)

[39] 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.

on the petition on 2-18-22, case #21-0912, Plaintiff received a letter of "reversal of notice of certification" of the alleged "seriously delinquent federal tax debt" to the State Department from Defendant dated three days ***later*** than when Plaintiff received the letter. (See Exhibit J - Attorney email date proof available). The Defendant's letter did not provide any explanation regarding the reason for this reversal, but the letter referenced a website (www.irs.gov/passports) which lists all possible lawful reasons for a reversal...

> *Reversal of certification. The IRS will send you Notice CP508R at the time it reverses certification. The IRS will reverse a certification when:*
>
> *(a) The tax debt is fully satisfied or becomes legally unenforceable,*
> *(b) The tax debt is no longer seriously delinquent, or*
> *(c) The certification is erroneous.*

19. The IRS's ongoing SS garnishment totaling approximately $37,800 (till ceasing payments-see Footnote #20) has not reduced the claimed tax debt below the $50k trigger threshold for certification to the DOS, yet a certification reversal letter was received by Plaintiff. The timing of this "reversal" is suspect given the U.S. Supreme Court challenge of Defendant's assessment related passport revocation by the State Department, and the scheduled conference on the same date of 2-18-22. It is extremely unlikely that this "reversal" being received on the same day as the Supreme Court conference was mere coincidence, and prima facie appears to be an attempt at distraction and delay, and to potentially obstruct justice in the passport case, and to mitigate Defendant's potential losses. Any fairminded jury or court would see the obvious ploy taken by Defendant against Plaintiff's efforts to receive justice and equity. There is nothing in the record that would mitigate the distinct probability of either gross incompetence, gross negligence, misfeasance, malfeasance or outright willful, wanton malicious fraud against Plaintiff. This provides further evidence for a Grand Jury investigation into Defendant's activities by any judge being presented with this evidence. (18 U.S.C. section 4).

20. Because this reversal letter did not contain any explanation as to the status of the alleged debt, Plaintiff filed a Freedom of Information Act request (FOIA) with Defendant on 2-22-2022 to the address from which the reversal letter was sent. This FOIA request (See Exhibit K) for the Defendant was a request to provide the exact documents showing the mechanism through which this reversal was initiated, by whom, the exact date of this reversal and the existing status of the assessment. This FOIA request was received by Defendant on 3-1-22, (See Exhibit L) and a 20 business day response was lawfully due by 3-29-22, but never received by this date.

21. Plaintiff called the IRS number on the reversal letter to inquire as to the status of the FOIA on 3-30-22, and told them of the FOIA and the receipt date by them. Plaintiff was told, after a 10 minute discussion, that there was little information on the FOIA but that it was received on 3-1-22, and there was no one Plaintiff could talk to about this. (Recording available). The agent then created an "internal" letter on the call and forwarded it to another office for response. FOIA statutes declare that any FOIA not received or responded to was to be considered "denied." Plaintiff can only conclude the Defendant refuses to "promptly" (26 U.S.C.

§6342 (a)(1)) respond or lawfully notice Plaintiff of the assessment status, and reasons for the reversal notice. (26 U.S.C. §6342 (a)(1)(A-E)).

22. The reversal letter referenced https://www.irs.gov/cp508r for information on the reversal. It states in part:

> *A previously certified debt is no longer seriously delinquent when:*
>
> *- It is being paid in a timely manner under an installment agreement entered into with the IRS.*
> *- It is being paid in a timely manner under an offer in compromise accepted by the IRS or a settlement agreement entered into with the Justice Department.*
> *- A collection due process hearing is timely requested in connection with a levy to collect the debt.*
> *- Collection has been suspended because a request has been made for innocent spouse relief under Internal Revenue Code Section 6015.*

None of these criteria apply to Plaintiff and only further clouds the exact lawful nature of the reversal and the status of the assessment.

23. Plaintiff just received some sort of response letter dated 3-29-22 from Defendant on 4-1-22. (See Exhibit M). This letter claims they received an "item" from this Plaintiff on 3-7-22 but doesn't state what that "item" is and does not follow the usual and customary FOIA response letters, or explain what they are responding to. Defendant received the FOIA on 3-1-22, not 3-7-22, so the nature of this whole thing is now in question. Defendant claims they will respond within 90 days and need to "process all of your information." This is quite extraordinary given this office sent the reversal letter and certainly should have at hand the answers regarding the nature of the reversal and assessment and not need an additional 90 days to "process" this FOIA, if indeed it is referencing the FOIA.

24. It is appearing that the certification reversal was possibly not made in the ordinary course of law, per the argument and evidence above. This suggests, prima facie, some sort of precious untoward effort by the IRS to avoid further judicial review of its passport revocation scheme, at least, is afoot, and perhaps cover up of its internal affairs on this reversal letter authority. This provides the jury/court with yet more evidence of Defendant's bad faith and real intentions. (See footnote #27), and the need for investigations.

25. Because Plaintiff cannot wait for an additional 90 days, and has received no timely notice of assessment status, and given the above evidence that Defendant has NEVER provided one iota of verifiable evidence from day one of the assessment, it is clear that Defendant has no credible authority to support its assessment against Plaintiff and this case should be decided accordingly.**([40])** Given the questionable recent actions by Defendant on the reversal of

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[40] 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).

certification and failure to lawfully "promptly" notify Plaintiff of the status of the assessment, to allow this to go unchecked and uncorrected would give license and support to Defendant to continue to arbitrarily make assessments against any American, at will, and act unlawfully in any aspect of Defendant's duties. Without proof of debt and authority being in evidence, and with Defendant being able to "manufacture" in-house records from nothing, and also "charge out" and "lose" all the records it cares to without accountability, only encourages Defendant to continue doing the same to all Americans similarly situated.

## SUMMARY, FURTHER POINTS OF EVIDENCE, AND CONCLUSION

**Plaintiff has provided evidence in fact and unrebutted prima facie evidence of the following facts of record:**

A) Plaintiff has, from long before Defendant's assessment, and even long before Defendant's seven, third party summons, refuted and contested Defendant's initial taxing claims against Plaintiff, and subsequently, the Defendant's in-house, computer generated and manufactured records and claims of assessed debt or tax liability without actual evidence in fact.

B) Plaintiff has been in at least 17 initial suits against Defendant over the last 10 plus years requesting proof of debt, proof of liability and proof of taxable income that Plaintiff allegedly received from any taxable event creating a liability for said assessment and garnishment, yet without any valid documentation or rebuttal other than "we say so."

C) Plaintiff provided government evidence in the way of social security records showing the recorded wages he received over his entire working history, but primarily for the alleged, and certainly arbitrary,**([41])** tax years of 2003 through 2006. This counters the claims of Defendant and the assessment against Plaintiff, and in fact, refutes it, and is the ***ONLY*** material "pre-assessment" document in existence in this record that validates Plaintiff's claim and disproves Defendant's arbitrary assessment. It is not realistic or rational to believe that Plaintiff made approximately one million dollars for just these 4 arbitrary years while only making poverty level wages for all years before or after.**([42])**

D) Reasonable assumptions would logically call into question the meager amount of

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[41] Plaintiff just recalled that he had filed a debt rebuttal tax return in 2003, for tax year 2002, and received 100% of his paid taxes back, (copy of refund check available if needed), only to subsequently receive another letter a little later from the Defendant (another office) stating that his tax return was "frivolous" and was denied, and he was subsequently charged a "frivolous tax return" penalty of $500 which was taken directly out of his bank account without due process of law, and despite previous documentation challenging the alleged tax debt. It was subsequent to this challenge that Defendant began attacking Plaintiff on his requests for clarification of tax and court case law. Document evidence available.

[42] It must be noted that Plaintiff was in fact working part time (25 hours per week) in apartment management for the years 2002-2005, (half of 2005...work and pay stub documents available), but discontinued due to Navy injury and work requirement issues, and had no outside employment at all for 2006 to the present. To presume that approximately one million dollars could show up in Plaintiff's life during those alleged assessable 4 years is unreasonable, to say the least.

Plaintiff's monthly social security of slightly more than $700,**([43])** based on his ***total life's wages*** since 1969 of approximately $250,000. This life total is about one-fourth the amount Defendant claims Plaintiff made in just the alleged tax years of 2003-2006 of approximately one million dollars, based on a $309,000, (or changed to approximately $255,000 assessment, for a single adult). This is four times Plaintiff's entire life's recorded part-time documented wages. Based on this data, Plaintiff's social security payments should be far larger than is established now, especially based on this assessment if such wages were a proven fact of any record whatsoever.

E) No criminal claims or charges of tax evasion by Defendant against Plaintiff have ever been of record. No Fifth Amendment Grand Jury indictment for tax evasion of any kind, and only "administrative" actions are of record despite Plaintiff's demands to charge him if a "law" has been broken by him.**([44])** This "tax evasion crime" is being "conclusively presumed" (Footnote #4) against Plaintiff by the Defendant's assessment amount for the tax years in question, but not addressed... i.e. Defendant insinuates... "you *made approximately one million dollars ($1,000,000) of 'income' over the course of the tax years 2003-2006 and you didn't report this as required by law, so we are manufacturing the assessment for this tax debt in-house,*" without evidence and arbitrarily out of thin air, with no evidence of debt that any jury would find remotely compelling, and all because of Plaintiff challenging the tax debt, which is Plaintiff's right to do. (See footnotes #10 & #25). This, and past lawsuits challenging this ongoing, yet unproven, presumption begs the questions... "Why would Plaintiff continue to challenge this alleged debt, at great financial and emotional costs if there were even the remotest chance of third party or other "pre-assessment" records being remotely available to anyone in the government or the banking system anywhere, and why no charges for criminal activity if it has occurred?" How do you hide evidence of receiving approximately $1,000,000 in 4 years, while disabled, and how did Defendant come up with such an assessment with no genuine financial records? This is just more prima facie evidence of potential unlawful activities by the Defendant.

F) After twice violating FOIA laws after three FOIA requests, and when forced in court through suit to comply, (*Maehr*, supra), Defendant failed to provide anything of a "certifiable" or "self authenticating" nature in way of third party summonsed records, or any personal "pre-

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[43] Although Plaintiff began receiving social security (SS) payments of $697 in August of 2015, (See Exhibit G), there has been one increase noticed to Plaintiff to something like $704. This SS was not attacked, as best as can be determined, because Plaintiff was receiving paper checks, nor was his social security bank account attacked by Defendant because the bank followed the law on garnishment and previously prevented said garnishment. The Defendant ONLY began garnishment when Plaintiff began direct deposit for January, 2016, foolishly believing the 15% law was also being upheld by Defendant, (not having acted through the Social Security Administration when he first applied for SS) yet Defendant then began garnishment of 100% from February 2016, directly through the SSA, bypassing the bank's scrutiny.

[44] It is clear that the Defendant has many ways to increase tax collection and reduce tax evasion by increasing prosecutions of and penalties for tax evasion. If Plaintiff has truly "evaded" paying taxes, broken any law or in any other way violated U.S. law, the Defendant has failed miserably at defending those standing laws, and is acting purely on presumption and administrative coercion against Americans defending themselves and challenging conflicting laws, and, unfortunately, are depending on ignorance of tax laws and standing stare decisis throughout the judicial system to manipulate its taxing scheme.

assessment" records that could lawfully[45] be used against Plaintiff in manufacturing in-house records. Such in-house documents are alleging and presuming evidence of debt but fail due process of law challenge and is merely, and ONLY, arbitrarily "conclusively presumed" and without proof, and is, in fact, a violation of due process of law if challenge is dismissed without proof of debt. (Footnote #4).

G) Defendant provided evidence that if any of Plaintiff's actual (exculpatory) "pre-assessment" records were ever in its possession, it failed to comply with its own rules/laws for maintaining any tangible records of any substance, even to the point that the ONLY records that could be and have been produced and used to assess Plaintiff are in-house Defendant-manufactured, computer-generated arbitrary records alleging actual taxable assets Plaintiff allegedly received for alleged arbitrary years 2003-2006.

H) Plaintiff has clearly stated throughout all proceedings that he never received any taxable "income" under ANY non-presumed definition of record for alleged tax years 2003-2006, (or ever) especially being a disabled veteran and limited in his ability to work or earn any sort of a realistic wage, let alone being able to invest in his life. This has been clearly established by the United States Court of Veterans Appeal and the Veterans Administration finally granting a 100% disability and unemployability status back over 10 years before 2020. (Evidence available if needed.)

I) Defendant has been completely unable to substantiate this tax assessment and garnishment against Plaintiff despite a thorough and yet unproductive search throughout Defendant's entire record keeping system over, allegedly, a year and a half involving at least 14 Defendant agents. (See #6, P. 5 above).

J) Defendant has provided no actual tangible answer as to the actual status of Plaintiff's alleged assessment based on the reversal of certification it sent Plaintiff and the Department of State (DOS). Plaintiff sent a letter to the DOS regarding the return of his passport on Feb 22, 2022, and the DOS received the letter on February 28, 2022. (Proof copies available). He received no written response since, but he received a call from the State Department and was directed to call another number on the issue. Plaintiff did so the next day, and the agent took Plaintiff's info and request details, but Plaintiff has not received any response on the return of his passport from anyone, further clouding the entire issue of the state of the assessment, the legal backing for the reversal of certification, and whether he will EVER receive his passport returned.

K) Plaintiff has surely proved his side of this claim with the preponderance of the clear and convincing evidential facts, even to the point of being far beyond any reasonable doubt. Without any rebuttal or proof in fact that controverts the material facts of this claim, Defendant has no foundation on which to maintain this assessment and garnishment, and Plaintiff should be GRANTED the following remedy:

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[45] 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.

## E. REQUEST FOR RELIEF

Plaintiff provides this request for relief by the jury and court based on this evidence of record:

1. ORDER Defendant to remove Plaintiff's social security garnishment order and Notice of Levy with the Social Security Administration.

2. ORDER the return of all monies garnished from Plaintiff's social security funds from the beginning till last garnishment of record, and including proper statutory interest on the amount garnished. (26 U.S.C. §6342 (c)).

3. ORDER reimbursement for court filing/service costs, and reasonable costs for several month's time in preparation of this suit.

4. ORDER removal of the Tax Lien/Notice of Levy on Plaintiff's Archuleta County, Colorado Recorder's Office records, with clear assessment error notice.

5. ORDER removal of Tax Lien/Notice of Levy from all credit reporting agencies, with clear assessment error notice.

6. ORDER reinstatement of Plaintiff's United State's passport, to include, at least, the full 10 year passport expiration life, but preferable a non-expiring lifetime passport as part of compensatory damages.

7. ORDER compensatory damages to Plaintiff based on, at least, the precedent set in U.S. Supreme Court case of *Pacific Mutual Life Insurance Co v. Haslip*, No. 89-1279 [March 4, 1991] which awarded Haslip four times total out of pocket loss for compensatory damages, (and 200 times that 4 times figure for punitive damages, if authorized by law) for wrongful taking. However, Plaintiff holds that compensatory damages should be at least 10-100 times total out of pocket garnishment for the prolonged frivolous, erroneous and arbitrary assessment and garnishment against Plaintiff's assets for almost 5 years, impoverishing him, forcing these court responses, and damaging his credit profile and his ability to carry on his small business these almost 6 years, (now severely damaged) as a precedent to prevent Defendant recidivism, to set an example that government must be held to the rule of law as all Americans are held, and for the public protection from this sort of smoke and mirror arbitrary and poor, if not criminal, accounting practices. (See Footnote #27), and/or...

8. Award Plaintiff the actual initial amount of this frivolous and apparently malicious assessment of $309,000 which Defendant attempted to extract from Plaintiff as just compensation, and for setting a precedent in such frivolous assessments against any American in the future.

9. ORDER sanction or other corrective measure against Defendant for failure to maintain records as required by law and as proven in the *Maehr, supra*, case, and because Defendant knowingly and persistently defended this unprovable assessment and garnishment for many years, despite specific challenges for proof, but without any evidence of debt, and defending it to the tune of over $42,000 (FOIA evidence available) and likely far more in actual total costs to taxpayers not answered in FOIA request. Separate suit can be filed if necessary on this issue.

10. ORDER the summons of a Grand Jury to investigate Defendant's very questionable and possibly illegal activities in this ongoing controversy likely affecting many other assessments by Defendant against many other Americans, OR refer this and all other evidence of

record to the proper jurisdiction and venue for a Grand Jury investigation to commence.

11. Any other compensation and justice the jury and court deems appropriate to defend the public against this sort of frivolous, erroneous, arbitrary and very questionable unethical or unlawful actions in Defendant's administrative accounting and assessment activities, especially given the *U.S. v. Tweel*, supra previous warning to Defendant.

12. Provide "Findings and Conclusions" for all rulings on all stated issues as required.**([46])**

**If Defendant's assessment and garnishment is upheld by the jury, or case is dismissed or denied for any reason, and without proof of debt and the above remedy not provided, Plaintiff raises three relevant and related issues. If these need to be raised in separate pleadings, the Plaintiff requests the court to so state, but Plaintiff reserves all his rights on these issues or other relevant issues that my arise in this case:**

**1. Statute of Limitations**: Plaintiff raises this issue due to the fact that the assessment was many years ago and Defendant has not yet collected the alleged full tax debt to date, despite ongoing garnishment, which, if ongoing, will not satisfy the alleged debt in Plaintiff's lifetime, and continue impoverishing Plaintiff for the rest of his life.

**2. Currently Not Collectible Status**: Plaintiff provided ample evidence to Defendant of his impoverished financial condition (26 U.S.C. §6342 (a)(1)(D)) when the garnishment began. This was completely ignored by Defendant in past court pleadings. Plaintiff required financial help from his family for approximately five years in order to pay his monthly debts. He gave up title to his home many years ago due to only receiving approximately $1400 per month from veterans disability, which was not even close to adequate to survive on. Past counsel advice (from Colorado Legal Services/Pro Se clinic advisors quoted in District Court rules) advised that this debt was "uncollectible" and questioned the motives of such action by the Defendant against social security and disability payments. (Recording available).

**3. Record adjustment:** Plaintiff requests that the court ORDER the assessment record by Defendant be provided directly to the Social Security Administration (SSA), along with properly calculated alleged wages made for the alleged tax years based on Defendant's assessment figures for each year as alleged proof of assets as assessed by Defendant, and for the SSA to adjust all Plaintiff's work history and wage records for said years accordingly, and that all past and future social security payments to Plaintiff be adjusted according to assessment amount by Defendant, and past due reimbursed to Plaintiff.

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[46] **Right to Findings of Fact and Conclusions of Law** "The parties are entitled to know the findings and conclusions **on all of the issues of fact, law, or discretion presented on the record**." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission V. South Carolina State Ports Authority et al*. certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct. (Emphasis added).

Respectfully submitted,

_____ Date _____

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