No. 12-6169

In The
Supreme Court of the United States

Jeffrey T. Maehr,
Petitioner

v.

Commissioner of Internal Revenue
Respondent.

On Petition for a Writ of Certiorari
The United States Court of Appeals
For the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

Jeffrey T. Maehr
924 Stollsteimer Rd.
Pagosa Springs, CO 81147
(970) 731-9724

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QUESTIONS PRESENTED

1. Is Respondent's so-called "income" tax a "Direct," or "Indirect," tax, or is there some other taxation form as yet undeclared by the courts that counters standing case law? (p. 5).

2. Does the Respondent have the lawful and constitutional authority to presume to define "income" as to include "all that comes in," and to include wages, salary or compensation for services, contrary to this honorable Court's and other Court's precedent, and congressional testimony? (p. 8).

3. Can the Respondent violate the Paperwork Reduction Act in claiming that Petitioner, or any American, is lawfully "required" to file a 1040 form that is labeled a "bootleg" form by Congress if it fails the Paperwork Reduction Act? (p. 13).

4. Can Respondent be acting under the name "Internal Revenue Service" and be lawfully sending said deficiencies and other documents, using U.S. mail, to Petitioner or any other American citizen, when the entity known as the "Internal Revenue Service" was lawfully "canceled" by the Treasury Department in 2005? (p. 13).

5. Can Respondent/IRS be acting against Petitioner, or any state citizen, when it not a U.S. government agency which Respondent testifies to, and which the Court of Claims has several times supported? (p. 14).

6. Can Respondent lawfully assess Petitioner under IR 6201 when he is *not* lawfully required to pay tax by stamp, and, if so, can Respondent lawfully assess Petitioner outside 6201 Assessment Authority, and without compliance with 26 CFR §301.6203-1.3, Internal Revenue Manual 3(17)(63)(14).1: Account 6110 Tax Assessments, and form 23C? (p. 14).

QUESTIONS PRESENTED—Continued

7. Are the Supreme Court cases cited in this ongoing and longstanding case, along with other standing court cases and congressional testimony, "frivolous" and to be ignored and dismissed by Respondent and the lower courts without any evidence to support what and how they are frivolous, i.e. evidence in fact? (p. 15).

8. Should Respondent be responsible in knowing the laws it allegedly is following in assessing and declaring deficiencies, and taxing outside constitutional parameters . . . i.e. did Respondent know, or should have known, its own violations were being implemented via fraud? (p. 16).

9. Can Respondent and the Courts ignore standing and jurisdictional challenges when presented? (p. 17).

10. Can the Tax Court lawfully ignore a Motion for Clarification as to several relevant questions regarding jurisdiction, and Rule 34(b), so Petitioner had an opportunity to properly amend original petition, and respond to the motion to dismiss? (p. 18).

11. Can Respondent stand on hearsay and presumption alone, providing no IR Code law as evidence to prove Petitioner, or anyone, is personally required to file a 1040 form? (p. 19).

12. Can Respondent and the named courts deprive Petitioner of due process of law in the right to be heard on all evidence and challenges presented? (p. 21).

13. Can Petitioner file A 1040 information form and *not* be willingly giving up his 5th Amendment right to not self-incriminate? (p. 22).

14. Can Respondent and the Tax Court *not* be required to provide proper Notice of Service of Order and Judgment to Petitioner or citizens? (p. 23).

QUESTIONS PRESENTED—Continued

15. Is Petitioner made a 14th Amendment Federal citizen by Respondent through hearsay and presumption, thereby bringing him under Respondent's jurisdiction? (p. 23).

16. Is Respondent lawfully allowed to call Petitioner a "tax protester" and other such biased and disparaging labels as it has? (p. 25).

17. Can Respondent, through hearsay and presumption, label Petitioner as a "taxpayer," under color of some unnamed tax law, without proof of same? (p. 26).

18. Does Respondent have the lawful, constitutional right to be attempting to force Petitioner to financially support projects, and funding for same, that violate his conscience and are against his religious beliefs and practices? (p. 26).

19. Can the Tax Court and Appeals Court reject new evidence proving Petitioner's positions in defending himself? (p. 28).

20. Can Respondent file a "Notice of Federal Tax Lien," and it being filed as an actual "tax lien," and *not* provide Petitioner proper "Due Process Hearing" as required by law, but still remove funds from Petitioner's bank account? (p. 28).

LIST OF PARTIES

The name of the Petitioner is:

Jeffrey T. Maehr

The name of the Respondent is:

Commissioner of Internal Revenue

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1913 Congressional Record, p. 3843, 3844; Senator Albert B. Cummins . . . . . p. 11

> "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 . . . Obviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment."

44 Maine 518 (1859) . . . . . p. 24

> ". . . [F]or it is certain, that in the sense in which the word 'Citizen' is used in the federal Constitution, 'Citizen of each State,' and 'Citizen of the United States,' are convertible terms; they mean the same thing; for the 'Citizens of each State are entitled to all Privileges and Immunities of Citizens in the several States,' and 'Citizens of the United States' are, of course, Citizens of all the United States."

44 U.S.C. §3512 . . . . . p. 13

> "(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if—
>
> "(1) the collection of information does not dis-

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play a valid control number assigned by the Director in accordance with this subchapter; or

"(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

"(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto."

45 Congressional Record, 4420 (1909) . . . . . pp. 6, 9

"Mr. Heflin. 'An income tax seeks to reach the unearned wealth of the country and to make it pay its share.' 4423 Mr. Heflin. 'But sir, when you tax a man on his income, it is because his property is productive. He pays out of his abundance because he has got the abundance.' "

A.C. Aukerman Co. v. R.L. Chaides Const. Co., 960 F.2d 1020, 1037 (Fed. Cir. 1992) . . . . . p. 8

"This court has never treated a presumption as any form of evidence."

Adkins v. Children's Hospital, 261 U.S. at 558 . . . p. 10

"In principle, there can be no difference between the case of selling labor and the case of selling goods."

Article 1, Section 8, Clause 17 . . . . . p. 24

"To exercise exclusive Legislation in all Cases

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whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

Ashton v. Kentucky (1966), 384 U.S. 195, 200, 86 S.Ct. 1407, 16 L.Ed.2d 469 . . . . . p. 20

"[V]ague laws in any area suffer a constitutional infirmity."

Black's Law Dictionary, 6th Edition, page 500 . . . p. 21

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, 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."

Black's Law Dictionary, 2nd Edition, "Income Tax" . . . . . p. 9

" 'A tax on the yearly profits arising from property, professions, trades and offices.' See also *2 Steph.* Comm 573. *Levi v. Louisville,* 97 Ky. 394,

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30 S.W. 973. 28 L.R.A. 480; *Parker Insurance Co.,* 42 La. Ann 428, 7 South. 599."

Bowers v. Kerbaugh-Empire Co., 271 U.S. 170; 46 S.Ct. 449 (1926) . . . . . p. 7

"It was not the purpose or effect of that amendment to bring any new subject within the taxing power."

Brewer v. U.S., cited as 764 F.Supp. 309 (S.D.N.Y. 1991) . . . . . p. 15

". . . However, there is no indication in the record before us that the "Summary Report of Assessments," known as Form 23C, was completed and signed by the assessment officer as required by 26 CFR §301.6203-1.3. Nor do the Certificates of Assessments and Payments contain 23C dates which would allow us to conclude that a Form 23C form was signed on that date. See *United States v. Dixon,* 672 F. Supp. 503, 505-506 (M.D. Ala.1987). Thus we find that the plaintiff has raised a factual question concerning whether IRS procedures were followed in making the assessments . . . This regulation provides, in relevant part, that '[t]he assessment shall be made by an assessment officer signing the summary record of assessment . . .' "

Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 11, 12, 18 (1916) . . . . . pp. 6-7

"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hith-

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erto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulations of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it . . .

"But it clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion.

"Indeed, from another point of view, the Amendment demonstrates that no such purpose was in-

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tended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution . . .

"[The Pollock court] recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct tax was adapted to prevent, in which case the duty would arise to disregard the form and consider the substance alone and hence subject the tax to the regulation of apportionment which otherwise as an excise would not apply."

Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) . . . . . p. 21

"Fraud upon the court is fraud which is directed to the judicial machinery itself . . . It is where the court or a member is corrupted or influenced

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or influence is attempted or where the judge has not performed his judicial function—thus where the impartial functions of the court have been directly corrupted."

Butchers' Union Co. v. Crescent City, Colorado, 111 U.S. 746, 757 (1883) . . . . . p. 9

"It has been well said that, the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable . . ."

CAHA v. U.S., 152 U.S. 211 (1894) . . . . . p. 24

"The laws of congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

Conley v. Gibson, 355 U. S. 41, 355 U. S. 45-46 (1957). See *Dioguardi v. Durning,* 139 F.2d 774 (CA2 1944) . . . . . p. 21

"We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Conner v. United States, 303 F. Supp. 1187 (1969) p. 1191: 47 C.J.S. Internal Revenue 98, p. 226 . . . . . p. 9

"[2] Whatever may constitute income, therefore, must have the essential feature of gain to

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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. Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed income, not compensation."

Coppage v. Kansas, 236 U.S. 1, at 14, 23, 24 (1915) . . . . . pp. 9-11

"Included in the right of personal liberty and the right of private property are taking of the nature of each is the right to make contracts for the acquisition of property. The chief among such contracts instead of personal employment, by which in labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other artists away to begin to acquire property, save by working for money... The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract

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cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates."

Cottage Savings Assn. v. Commissioner,
499 U.S. 554 (1991) . . . . . p. 9

Cory et al. v. Carter, 48 Ind. 327 1874, head note 8 . . p. 24

"The first clause of the fourteenth amendment made Negroes citizens of the United States, and citizens of the State in which they reside, and thereby created two classes of citizens, one of the United States and the other of the state."

Crosse v. Bd. of Supervisors of Elections,
221 A.2d. 431 (1966) . . . . . p. 25

"Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state."

Curley v. U.S., cited as 791 F. Supp 52
(E.D.N.Y. 1992) . . . . . p. 15

". . . [5] Plaintiff relies heavily on *Brafman v. United States,* 384 F.2d 863 (5th Cir. 1967), where an assessment was invalidated due to the lack of a signature on the 23C Form. This defect, however, was a significant violation of the regulation . . . A signature requirement protects the taxpayer by ensuring that a responsible officer has approved the assessment . . ."

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Del Vecchio v. Bowers, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935 . . . . p. 8

"[A] presumption is not evidence."

Diversified Metal Products, Supra Inc., v. T-bow Company Trust, Internal Revenue Service, and Steve Morgan (1993); civil No. 93-405-E-EJL, at #4 . . . . . p. 14

"Denies that the Internal Revenue Service is an agency of the United States Government . . ."

Doyle v. Mitchell Brother, Co., 247 US 179 (1918) . . . . p. 8

"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' . . ."

Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972) . . . . . p. 26

". . . [P]ersons who are not taxpayers are not within the system and can no benefit by following the procedures prescribed for taxpayers . . ."

Edwards v. Keith, 231 F. 110 (2nd Cir. 1916) . . . . . p. 9

"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."

Eisner v Macomber, 252 US 189, 205–206 (1920) . . . p. 7

"The 16th Amendment must be construed in

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connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

Evans vs. Gore, 253 US 245, 263 (1920) . . . . . p. 7

". . . It manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation."

Fairbanks v. U.S. 181 U.S. 283, 294 (1901) . . . . . p. 7

"That decision affirms the great principle that what cannot be done directly (direct taxation) because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result."

FDA v. Brown & Williamson,
153 F.3d 155, 160-167 (CA4 1998),
aff'd 529 U.S. 120 (2000) . . . . . p. 20

See also *Carminetti v. U.S.,* 242 U.S. 470, 485, 489-493 (1916), citing (on 485) *Lake County v. Rollins,* 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger,* 157 U.S. 1, 33; *U.S. v. Lexington Mill and Elevator Co.,* 232 U.S. 399, 409; *U.S. v. Bank,* 234 U.S. 245, 258.

Federal Crop Insurance Corporation
v. Merrill, 332 U.S. 380 (1947) . . . . . p. 17

"The United States Supreme Court requires proof of authority in assertions of power by anyone dealing with a person claiming government authority."

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Flint v. Stone Tracy Co., 220 U.S. 107, 31 S.Ct. 342, 349 (1911) . . . . . p. 6

"Excises are taxes laid upon:

"(1.) the manufacture, sale or consumption of commodities within the country,

"(2.) upon licenses to pursue certain occupations, and

"(3.) upon corporate privileges."

Flint, Supra at 151–152 . . . . . p. 6

". . . [T]he requirement to pay such taxes involves the exercise of the privilege and if business is not done in the manner described no tax is payable . . . [I]t is the privilege which is the subject of the tax and not the mere buying, selling or handling of goods."

Fortney v. U.S., C.A.9 (Nev.) 1995, 59 F.3d 117 . . . . p. 4

"The United States Supreme Court, in *Haines v. Kerner* 404 U.S. 519 (1972) stated that all litigants defending themselves must be afforded the opportunity to present their evidence and that the Court should look to the substance of the complaint rather than the form, and that a minimal amount of evidence is necessary to support contention of lack of good faith."

Garner v. United States, 424 U.S. 648. (1975) . . . . p. 22

"The information revealed in the preparation and filing of an income tax return is, for the purposes of Fifth Amendment analysis, the testimony of a witness." Government compels the fil-

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ing of a return much as it compels, for example, the appearance of a 'witness' before a grand jury."

Gov. A.E. Wilson on the Income Tax (16) Amendment, *New York Times,* Part 5, p. 13, February 26, 1911 . . . . . p. 11

"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."

Gould v. Gould, 245 U.S. 151 . . . . . p. 20

"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."

Grayned v. City of Rockford, 408 U.S. at 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222. (See also *Papachristou v. Jacksonville* [1972], 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110) . . . . . p. 20

"The critical question in all cases is whether the law affords a reasonable individual of ordinary intelligence fair notice and sufficient definition and guidance to enable him to conform his conduct to the law; those laws that do not are void for vagueness."

Grosjean v. American Press Co., 297 U.S. 233 (1936); *Jones v. Opelika,* 316 U.S. 584,

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56 S.Ct. 444 (1943). (See also *Follett v. McCormick,* 321 U.S. 573 64 S.Ct. 717 [1944]; *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 86 S.Ct. 1079 [1966]) . . . . . p. 10

"The freedom and right to earn a living through any lawful occupation is *exempt* from taxation by the federal government!" (emphasis added).

Hagans v. Lavine, 415 US 528, 533 . . . . . p. 17

"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings . . . 533 When jurisdiction is not squarely challenged it is presumed to exist. In the courts there is no meaningful opportunity to challenge jurisdiction, as the court merely proceeds summarily. However once jurisdiction has been challenged in the courts, it becomes the responsibility of the plaintiff to assert and prove said jurisdiction . . ."

Hale v. Henkel, 201 U.S. 43 (1906) . . . . . p. 23

"It is not declared that he may not be compelled to testify to facts which may impair his reputation for probity, or even tend to disgrace him; but the line is drawn at testimony that may expose [201 U.S. 43, 67] him to prosecution."

Hassett v. Welch., 303 US 303, pp. 314–315, 82 L Ed 858. (1938) . . . . . p. 20

"[I]f doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer . . ."

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Heiner v. Donnan, 285, US 312 (1932) and *New York Times v. Sullivan,* 376 US 254 (1964) . . . . p. 8

"The power to create [false] presumptions is not a means of escape from constitutional restrictions."

Helvering v. Edison Bros. Stores, 133 F2d 575. (1943) . . . . . p. 8

"The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment."

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al. Certiorari to the United States Court of Appeals for the Sixth Circuit No. 10–553. Argued October 5, 2011, decided January 11, 2012 . . . . . p. 27

Justice Thomas concurring, citing *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos,* 483 U. S. 327, 336 (1987): "([I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it under-

stood to be its religious mission. [Footnote omitted.] These are certainly dangers that the First Amendment was designed to guard against."

Justice Alito, with whom Justice Kagan joins, concurring, wrote:

"Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have 'act[ed] as critical buffers between the individual and the power of the State.' *Roberts v. United States Jaycees,* 468 U. S. 609, 619 (1984). In a case like the one now before us . . . it is easy to forget that the autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. The Constitution guarantees religious bodies "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine" (citing *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America,* 344 U. S. 94, 116 [1952])."

Justice Alito continues: ". . . Applying the protection of the First Amendment to roles of religious leadership, worship, ritual, and expression focuses on the objective functions that are impor-

tant for the autonomy of any religious group, regardless of its beliefs."

Justice Alito continues: ". . . As we have recognized in a similar context, '[f]orcing a group to accept certain members may impair [its ability] to express those views, and only those views, that it intends to express.' *Boy Scouts of America v. Dale,* 530 U.S. 640, 648 (2000). That principle applies with special force with respect to religious groups, whose very existence is dedicated to the collective expression and propagation of shared religious ideals. See *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U. S. 872, 882 (1990) . . .

" 'The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed.' *Watson v. Jones,* 13 Wall. 679, 728–729 (1872)."

Justice Alito continues: "The 'ministerial' exception gives concrete protection to the free 'expression

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and dissemination of any religious doctrine' . . . But while a ministerial title is undoubtedly relevant in applying the First Amendment rule at issue, such a title is neither necessary nor sufficient. As previously noted, most faiths do not employ the term 'minister,' and some eschew the concept of formal ordination." (Footnote omitted.)

" '[T]he ministerial exception has not been limited to members of the clergy.' *EEOC v. Catholic Univ.,* 83 F. 3d 455, 461 (1996) . . .

"The Ninth Circuit too has taken a functional approach, just recently reaffirming that 'the ministerial exception encompasses more than a church's ordained ministers.' *Alcazar v. Corp. of Catholic Archbishop of Seattle,* 627 F. 3d 1288, 1291 (2010) (en banc); see also *Elvig v. Calvin Presbyterian Church,* 375 F. 3d 951, 958 (2004). The Court's opinion today should not be read to upset this consensus."

Huff v. United States, 10 F.3d 1440 (9th Cir. 1993) . . p. 15

"Form 4340 Certificates of Assessment and Payment, together with Form 23C Summary Records of Assessment, demonstrate that a valid assessment was made."

IR Code §6201 (1939 IRC §3640)
Assessment Authority . . . . . p. 14

"(a) Authority of Secretary.—The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this

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title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner prescribed by law. Such authority shall extend to and include the following:

"(1) Taxes shown on returns. The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title."

IR Manual 3(17)(63)(14).1: Account 6110 Tax Assessments . . . . . p. 14

"(2) All tax assessments must be recorded on Form 23C Assessment Certificate. The Assessment Certificate must be signed by the Assessment Officer and dated. The Assessment Certificate is the legal document that permits collection activity."

IR Manual 3(17)(46)2.3 . . . . . p. 14

"Certification

"(1) All assessments must be certified by signature of an authorized official on Form 23C, Assessment Certificate. A signed Form 23C authorizes issuance of notices and other collection action . . .

"(2) Some assessments are prescribed for expeditious action as and be certified on a daily basis. These assessments will require immediate preparation of Form 23C from RACS . . . Form 23C is described in *Document 7130, IRS Printed Product Catalog* as:

"23C—Assessment Certificate-Summary Record of Assessments."

TABLE OF AUTHORITIES CITED—Continued

Jack Cole Company v. Alfred T, MacFarland, Commissioner, 206 Tenn. 694, 337 S.W.2d 453 Sup. Court of Tennessee (1960) . . . . . p. 11

"Since the right to receive income or earnings is a right belonging to every persons, this right cannot be taxed as privilege." (See also *Jerome H. Sheip Co. v. Amos,* 100 Fla. 863, 130 So. 699, 705 [1930]; *Redfield v. Fisher,* 135 Or. 180, 292 P. 813, 819 [Ore. 1930]; *Sims v. Ahrens,* 167 Ark. 557, 271 S.W. 720, 733 [1925]; *O'Keefe v. City of Somerville,* 190 Mass. 110, 76 N.E. 457, 458 [1906]).

Joseph Nash v. John Lathrop, 142 Mass. 29, March 10, 1886–May 11, 1886 at 35 . . . . . p. 3

"Every citizen is presumed to know the law thus declared . . ."

Kazubowski v. Kazubowski, 45 DJ.2d 405, 259 N.E.2d 282. 290 . . . . . p. 21

"An orderly proceeding wherein a person . . . has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case."

Kitchens v. Steele, 112 F.Supp 383 . . . . . p. 25

"A citizen of the United States is a citizen of the federal government . . ."

Laureldale Cemetery Assn. v. Matthews, 47 Atlantic 2d. 277 (1946) . . . . . p. 11

". . . Reasonable compensation for labor or services rendered is not profit . . ."

TABLE OF AUTHORITIES CITED—Continued

Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States,* 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954) . . . . . p. 21

". . . [J]ustice must satisfy the appearance of justice."

Long v. Rasmussen, 281 F. 236 (1922) . . . . . p. 26

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws . . ."

Lucas v. Earl, 281 U.S. 111 (1930) . . . . . p. 12

"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 has performed the services . . . is without support, either in the language of the Act or in the decisions of the courts construing it. Not only this, but it is directly opposed to provisions of the Act and to regulations of the U.S. Treasury Department, which either prescribed or permits that compensations for personal services not be taxed as a entirety and not be returned by the individual performing the services. It has to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal ser-

TABLE OF AUTHORITIES CITED—Continued

vices 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."

Main v. Thiboutot, 100 S. Ct. 2502 (1980). Cf. (See also *Bialac v. Harsh,* U.S., 34 L.Ed.2d 512, 463 F.2d 1185 (9th Cir. 1972) . . . . . p. 18

"The law provides that once State and Federal jurisdiction has been challenged, it must be proven."

Mattox v. U.S. 156 U.S. 237, 243 (1895) . . . . . p. 16

"We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted."

McCulloch v. Maryland, 4 Wheat 316, 403 (1819) . p. 24

"No political dreamer was ever wild enough to think of breaking down the lines which separate the states and compounding them into one common mass."

McNally v. U.S., 483 U.S. 350, 371–372, *quoting U.S. v. Holzer,* 816 F.2d. 304, 307 . . . . p. 17

"Fraud in its elementary common law sense of deceit includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, and if he deliberately conceals material information from them he is guilty of fraud."

Merchants Loan & Trust Co. v. Smietanka, 225 U.S. 509, 518, 519. (1923) . . . . . p. 9

"Income, as defined by the Supreme Court

TABLE OF AUTHORITIES CITED—Continued

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. 179, *Eisner v. Macomber* 252 U.S. 189, *Evans v. Gore* 253 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}]).

New York Life Ins. Co. v. Gamer, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) . . . . p. 8

"[A presumption] cannot acquire the attribute of evidence . . ."

Owens v. City of Independence, 100 S.Ct., 1398, 1980) . . . . . p. 18

". . . [M]ere good faith assertions of power have been abolished."

Peck & Co. v. Lowe, 247 U.S. 165 (1917) Brief for the Appellant at 11, 14-15 . . . . . p. 12

"The Sixteenth Amendment to the Constitution has not enlarged the taxing power of Congress or affected the prohibition against its burdening exports. (11) This is brought out clearly by this court in *Brushaber v. Union Pacific Railroad Co.,* 240 U.S. 1, and *Stanton v. Baltic Mining Co.,* 240 U.S. 103. In the former case it was pointed out that the all-embracing power of taxation conferred upon Congress by the Constitution included two great classes, one indirect taxes or excises, and the other direct taxes, and that of apportionment with regard to direct taxes. It was held that

TABLE OF AUTHORITIES CITED—Continued

the income tax in its nature is an excise; that is, it is a tax upon a person measured by his income . . . It was further held that the effect of the Sixteenth Amendment was not to change the nature of this tax or to take it out of the class of excises to which it belonged, but merely to make it impossible by any sort of reasoning thereafter to treat it as a direct tax because of the sources from which the income was derived. ([14-15] *Peck & Co. v. Lowe,* 247 U.S. 165 [1917]. Not in the ruling itself)."

Pollock, 158 U.S. at 635-637 . . . . . p. 9

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such. It is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professionals, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance as a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not

TABLE OF AUTHORITIES CITED—Continued

mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not lay excise taxes on business, privileges, employments and vocations. But this is not such an act; and the scheme must be considered as a whole."

Public Law 97-280—96 STAT. 1211—
97th Congress . . . . . p. 27

"WHEREAS the Bible, the Word of God, has made a unique contribution in shaping the United States as a distinctive and blessed nation and people;

"WHEREAS deeply held religious convictions springing from the Holy Scriptures led to the early settlement of our Nation;

"WHEREAS Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and Constitution of the United States;

"WHEREAS many of our great national leaders—among them Presidents Washington, Jackson, Lincoln, and Wilson—paid tribute to the surpassing influence of the Bible in our country's development, as in the words of President Jackson that the Bible is "the Rock on which our Republic rests;

"WHEREAS the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the Scriptures in the lives of individuals, families, and societies;

"WHEREAS this Nation now faces great chal-

TABLE OF AUTHORITIES CITED—Continued

lenges that will test this Nation as it has never been tested before; and

"WHEREAS that renewing our knowledge of and faith in God through Holy Scripture can strengthen us as a nation and a people:

"NOW, THEREFORE, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate 1983 as a national "Year of the Bible" in recognition of both the formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures."

Reid v. Covert, 354 US l, 1957 . . . . . p. 5

"The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution."

Republica v. Sweers, 1 Dallas 43. and
28 U.S.C. 3002 (15) . . . . . p. 24

"UNITED STATES is a corporation and that it existed before the Revolutionary war. The United States is not a land mass; it is a corporation.

Rule 11. Certiorari to a United States
Court of Appeals Before Judgment . . . . . p. 2

"A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify

TABLE OF AUTHORITIES CITED—Continued

deviation from normal appellate practice and to require immediate determination in this Court. (See 28 U.S.C. §2101[e].)"

Schulz v. IRS and Anthony Roundtree,
U.S. Court of Appeals, Docket No. 04-0196-cv,
p. 10, lines 10-17 . . . . . p. 21

"Any legislative scheme that denies subjects an opportunity to seek judicial review of administrative orders except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties "so heavy as to prohibit resort to that remedy" (*Oklahoma Operating Co. v. Love,* 252 U.S. 331, 333 [1920]), runs afoul of the due process requirements of the Fifth and Fourteenth Amendments."

Senate Report analysis of Sec. 3512; 21 . . . . . p. 13

"[I]nformation collection requests which do not display a current control number or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public . . . S.Rep. No. 930, Supra 96th Cong., 2d Sess. 52, reprinted in 1980 U.S.Code Cong. & Admin. News 6241, 6292. See also 5 C.F.R. Sec. 1320.5(c): 'Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.' "

Slaughter House, 83 U.S. 36. (1873) . . . . . p. 24

TABLE OF AUTHORITIES CITED—Continued

"It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual."

Slaughter House, 83 U.S. 36, at 127 (1873) . . . . . p. 9

"Property is everything which has an exchangeable value, in the right of property includes the power to dispose of that according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lives to a large extend the foundation of most other forms of property, and of all solid individual and national prosperity."

Southern Pacific v. Lowe, U.S. 247 F. 330. (1918) . . . p. 9

". . . [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.' "

Standard v. Olsen, 74 S. Ct. 768; Title 5 U.S.C., Sec. 556 and 558 (b) . . . . . p. 18

"No sanctions can be imposed absent proof of jurisdiction."

Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937] . . . . . p. 11

"Income within the meaning of the Sixteenth Amendment and Revenue Act, means 'gains' . . . and in such connection 'gain' means profit . . . pro-

TABLE OF AUTHORITIES CITED—Continued

ceeding 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 . . . Income is not a wage or compensation for any type of labor."

Stratton's Independence, Ltd. v. Howbert, 231 US 399, 414 (1913) . . . . . p. 6

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the *Pollock* case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax [direct], but an excise tax [indirect] upon the conduct of business in a corporate capacity, measuring however, the amount of tax by the income of the corporation . . . [Additional cites omitted.]"

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]) . . . . . p. 17

"It is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties."

Taft v. Bowers, N.Y. 1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460 . . . . . p. 9

TABLE OF AUTHORITIES CITED—Continued

"The meaning of 'income' in this amendment is the gain derived from or through the sale or conversion of capital assets: from labor or from both combined; not a gain accruing to capital or growth or increment of value in the investment, but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital however employed and coming in or being 'derived,' that is, received or drawn by the recipient for his separate use, benefit, and disposal."

Thomas v. State, 15 Ind. 449 . . . . . p. 25

"One may be a citizen of a State and yet not a citizen of the United States." (See also *Cory v. Carter,* 48 Ind. 327 [17 Am. R. 738]; *McCarthy v. Froelke,* 63 Ind. 507; In Re *Wehlitz,* 16 Wis. 443. *McDonel v. State,* 90 Ind. 320, 323, 1883.)

Title 4 U.S.C. §72 Public offices; at seat of Government . . . . . pp. 20, 24

"All offices attached to the seat of government shall be exercised in the District of Columbia and not elsewhere, except as otherwise expressly provided by law."

Treasury Department's Division of Tax Research publication, "Collection at Source of the Individual Normal Income Tax," 1941 . . . . . p. 10

"For 1936, taxable income tax returns filed represented only 3.9% of the population . . . [O]nly a small proportion of the population of the United States is covered by the income tax."

Treasury Inspector General for Tax Administration—TIGTA. (Audit Report No. 2012-30-066) . . . . . p. 25

TABLE OF AUTHORITIES CITED—Continued

"The use of any such terminology is barred under a provision of the IRS Restructuring and Reform Act of '98, the audit said. Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)1 Section (§) 3707 prohibits the IRS from using Illegal Tax Protester or any similar designations."

TREASURY ORDER: 150-06, SUBJECT:
Designation as Internal Revenue Service.
CANCELLATION DATE: August 22, 2005.
REASON FOR CANCELLATION:
TO 150-06, dated July 9, 195 . . . . . p. 14

"The entity formerly known as the Bureau of Internal Revenue would be known as the Internal Revenue Service. TO 150-06 is cancelled."

Treas. Reg. §1.312-6(b) . . . . . p. 13

"Among the items entering into the computation of corporate earnings and profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includable in gross income under section 61 or corresponding provisions of prior revenue acts."

Treas. Reg. §1.61-1 . . . . . p. 13

"Gross income means all income from whatever source derived, unless excluded by law."

U.S. v. Balard, 535, 575 F. 2D 400 (1976);
(see also *Oliver v. Halstead,* 196 VA 992;
86 S.E. Rep. 2D 858) . . . . . p. 11

TABLE OF AUTHORITIES CITED—Continued

"Gross income and not 'gross receipts' is the foundation of income tax liability . . . The general term 'income' is not defined in the Internal Revenue Code . . . '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. 575 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 . . ."

United States Code Congressional and Administrative News, 98th Congress, Second Session, 1984, Oct. 19, volume 2; par. 3077, 98 STAT. 2707 (West Publishing Co., 1984), Terrorism . . . . . p. 32

"[An] act of terrorism, means any activity that (A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and (B) appears to be intended (i) to intimidate or

TABLE OF AUTHORITIES CITED—Continued

coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping."

United States v. Butler, 297 U.S. (1935) . . . . . p. 7

"Every presumption is to be in the oldest in favor of faithful compliance by Congress with the mandates of the fundamental law (the Constitution-Petitioner). Courts are reluctant to adjudge any statute in contravention of them. But, under our frame of government, no other places is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of a granted power. When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress. How great is extent that range, when the subject is the promotion of the general welfare of the United States, we hardly need remark. But, despite the breadth of the legislative discretion, our duty to hear and to render judgment remains . . . If the statute plainly violates the stated principle of the Constitution, we must so declare."

U.S.C.A. Const. Am 16 . . . . . p. 9

"There must be gain before there is 'income' within the 16th Amendment."

U.S. v. Cruikshank, 92 U.S. 542 1875 . . . . . p. 25

"We have in our political system a Govern-

TABLE OF AUTHORITIES CITED—Continued

ment of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own . . ."

U.S. v. La Salle N.B., 437 U.S. 298 (1978) . . . . . p. 16

"The IRS at all times must use the enforcement authority in good-faith pursuit of the authorized purposes of Code."

United States v. Morton Salt Co.,
338 U.S. 632, 654 . . . . . pp. 17, 22

"The Court is free to act in a judicial capacity, free to disagree with the administrative enforcement actions if a substantial question is raised or the minimum standard is not met. The District Court reserves the right to prevent the 'arbitrary' exercise of administrative power, by nipping it in the bud."

U.S. v. Tweel, 550 F. 2d. 297, 299, 300 (1977).
(See also U.S. v. Prudden, 424 F.2d 1021, 1032;
Carmine v. Bowen, 64 A. 932.) . . . . . p. 17

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading . . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately."

TABLE OF AUTHORITIES CITED—Continued

United States v. Wong Kim Ark,
169 US 649, 692. (1898) . . . . . p. 24

"The object of the 14th Amendment, as is well known, was to confer upon the colored race the right of citizenship."

Van Valkenburg v. Brown (1872), 43 Cal 43, 47.) . . p. 24

"No white person born within the limits of the United States, . . . or born without those limits, and subsequently naturalized under their laws, owes the status of citizenship to the recent Amendments to the Federal Constitution."

Vaughn v. State, 3 Tenn.Crim.App. 54,
456 S.W.2d 879, 883 . . . . . p. 22

"Aside from all else, 'due process' means fundamental fairness and substantial justice."

Waring v. City of Savannah, 60 Ga. 93, 100 (1878) . . p. 10

"So that, perhaps, the true question is this: is income property, in the sense of the constitution, and must it be taxed at the same rate as other property? The fact is, property is a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree; income the fruit. The fruit, if not consumed (severed) as fast as it ripens, will germinate from the seed . . . and will produce other trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat . . . it is no tree, and will produce itself no fruit."

Winters v. New York, 333 U.S. 507, 515-16 (1948) . . p. 20

"The vagueness may be from uncertainty in regard to persons within the scope of the act . . ."

TABLE OF AUTHORITIES CITED—Continued

Wyoming v. Oklahoma, 502 U.S. 437, 451 (1982) . . p. 2

"But where claims are of sufficient seriousness and dignity, in which resolution by the judiciary is of substantial concern, the Court will hear them. The principles are the same whether the Court's jurisdiction is exclusive or concurrent." (See also *Texas v. New Mexico,* 462 U.S. 554 [1983]; *California v. West Virginia,* 454 U.S. 1027 [1981]; *Arizona v. New Mexico,* 425 U.S. 794 [1976]).

DISTRICT COURT CASES . . . . . p. 3

1. U.S. District Court, District of Colorado—Case #08-cv-02274-LTB-KLM
2. U.S. District Court, District of Nebraska—Case #8:08-CV-190
3. U.S. District Court, Western District of Texas, Austin Division—Case #A-09-CA-097-LY
4. U.S. District Court, Western District of North Carolina, Charlotte Division—Case #3:08-MC-00067-W
5. U.S. District Court, Northern District of California, San Jose Division—Case #CV-08-80218 JW
6. U.S. District Court, Eastern District of Virginia—Case #3:08-MC-00003-HEH
7. U.S. District Court, District of New Mexico—Case #1:08-MC-00018-BB

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jeffrey T. Maehr, respectfully prays that a writ of certiorari issue to review long-standing case law and challenges directly affecting the judgment below, and far more that has never been properly adjudicated, and can *only* be done so herein.

OPINIONS BELOW

[X] For cases from federal Courts: this case . . .

The opinion of the United States Court of appeals appears at Appendix A to the Petition and

[ ] reported at; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

• The date on which the United States Court of Appeals decided Petitioner's case was May 17, 2012.

• A timely petition for rehearing was denied by the United States Court of Appeals on June 8, 2012, and a copy of the order denying rehearing appears at Appendix B. Tax Court "Order of Dismissal and Decision" appears at Appendix C. This Court has jurisdiction under 28 U.S.C. §1254(1) to review on writ of certiorari the Tenth Circuit's decision.

Due process on constitutional and legal questions has been, and is being, denied Petitioner and all Americans on these issues. The claims in this issue certainly are of "sufficient seriousness and dignity," which descrip-

tion this Court stated is valid reason to "hear them" (*Wyoming,* p. xli), and that "the case is of such imperative public importance . . . to require immediate determination in this Court" (Rule 11, p. xxxi).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

U.S. Const. Art. 1, Sect. 2, cl. 3; Art. 1, Sect. 9, cl. 4, direct taxes.

U.S. Const. Art. 1, Sect. 8, cl. 1, indirect taxes.

U.S. Const. Article 1, Section 8, Clause 17—U.S. Government Jurisdiction.

U.S. Const. 5th Amendment—Due Process.

U.S. Const. 14th Amendment—Citizenship/jurisdiction.

U.S. Const. 16th Amendment; authority to tax outside Constitutional parameters; constitutional "income."

26 U.S.C.—Law proving income tax liability.

26 U.S.C. 6201(1939 IRC §3640)—Assessment Authority.

44 U.S.C. §3512—Collection of Information.

Internal Revenue Manual 3(17)(63)(14).1—Account 6110 Tax Assessments.

28 U. S. C. §2101(e)—Rule 11.

Title 4 U.S.C. §72 Public offices—At seat of Government.

TREASURY ORDER: 150-06, SUBJECT: Designation as Internal Revenue Service—Title 18 U.S.C. §1342)

STATEMENT OF THE CASE

Respondent's administrative functions are being implemented under color of law, with a 10-year history with Petitioner, and a 99-year history with the People of this republic. In 2002, Petitioner began studies in case and constitutional law and the IR Code because he was "presumed to know the law" (*Joseph Nash,* p. xxv), but certainly didn't, as most Americans don't today. We accepted what we were told was law and trusted those saying it. Petitioner began seeing contradictory evidence in long-standing Court cases and constitutional law countering Respondent's claims regarding its taxing process and what lawful "income" was, the authority for Respondent to be taxing outside the two great classes of taxation, and other related legal and constitutional issues.

In 2003, Petitioner began requesting answers to constitutional questions regarding Respondent's positions in application of its taxation process which have been completely ignored and labeled as "frivolous." He was told that, if he wanted any answers, it would have to be found "in the Courts" and that they would not respond to such questions. No answers or explanations of the Court cases presented were forthcoming.

Petitioner received copies of Summonses to multiple businesses and banks he was working with in 2008. Petitioner filed Motions to Quash in each Summons, per Federal District Court cases. (See p. xli.)

Petitioner was later sent notices of alleged "deficiencies" for years 2003–2006, and Petitioner had but the Tax Court and Appeals Court avenue to receive denied 5th Amendment due process. Petitioner received *no* response in these Courts to standing and constitutional and other challenges. The Respondent and Courts simply ignored

the entirety of the case, and went to "form" and ignored the "substance" of the case (*Fortney,* p. xvii).

Petitioner shows that the scope of these issues involves far more than himself, involving many millions of people. While there are questions regarding error in the lower Courts, and unlawful procedures specific against Petitioner, the larger issues are clearly legal and constitutional.

The lower Court's errors stated herein are *prima facie* evidence of either ongoing fraud against Petitioner and all Americans, or a clear bias against Petitioner.

REASONS FOR GRANTING THE PETITION

The essential, foundational and original intent of Congress regarding "income" taxation and taxing authority has been slowly perverted over the decades with propaganda and actions under color of law. The original intent was known long ago, and supported by this honorable Court, but has been slowly twisted to mean something completely different today.

Despite the quoted cases by Respondent in lower court cases claiming arguments were "frivolous," none of these cited cases has ever had evidence in fact entered into the record, or presented as evidence to refute Petitioner's lawful challenges to "prove" them "frivolous" outside hearsay and presumption.

Respondent failed to rebut Petitioner's affidavits, and it is well understood under "maxims of law" that "an unrebutted affidavit stands as truth."

This is a fundamental law issue, and the gravity of these questions impacts every man, woman and child in America, and has, for nearly a hundred years, been cor-

rupted to extract finances from all citizens under a slowly perverted system that has deceived and misled even our Courts to this day, as this evidence proves. These questions are very relevant to this Court's recognition of the "deep commitment of the American People to the Rule of Law and to constitutional government" (Court web site). Petitioner and most Americans stand on that belief.

This Court's Justices take two oaths to uphold this commitment. One is the same oath Petitioner took when serving in the Navy, and still stands upon.

This case may be unusual, and certainly has more questions than are customary. However, said questions cannot be divorced from this case since they all have been raised throughout, and due process on each and every question is lacking in the lower courts.

Petitioner responds to the questions presented:

Question 1 discussion: Respondent consistently fails to provide any lawful evidence of whether its authority to tax is under "direct" (U.S. Const. Art. 1, Sect. 2, cl. 3; Art. 1, Sect. 9, cl. 4) or "indirect" (U.S. Const. Art. 1, Sect. 8, cl. 1) tax laws, neither of which are being constitutionally (Reid, p. xxxi) applied against Petitioner or most any American under its taxing scheme.

In fact, the courts are in contradiction of each other on this topic alone, creating a serious due process problem. (There are far too many cases to cite or argue herein, but Amicus briefs are available).

Respondent is distorting this Court's previous ruling on the 16th Amendment regarding direct and indirect taxation, while claiming the 16th Amendment authorizes the type of wage taxation it is now applying.

The 16th Amendment did *not* "provide for a hitherto unknown power of taxation," as this was an "erroneous

assumption," and, "if acceded to, would cause one provision of the Constitution to destroy another" (*Brushaber,* p. ix). The 16th Amendment was intended to "reach the unearned wealth of the country," income stemming from abundance (45 Congressional Record, 4420, 4423, p. vii), but was never considered to include wages.

The income tax law of 1894 amounted in effect to a "direct tax upon property [labor is property; see below] and was invalid because not apportioned according to populations," and was also classified as an "excise tax on the privilege of doing business in a corporate capacity" (*Stratton's,* p. xxxiv), and was to be originally "enforced as such" (*Brushaber,* p. ix).

To further confuse the scheme even more, the Courts have also stated that personal wage taxation is *not* an excise tax. Excise taxes, as stated by the Court, are taxes laid upon . . .

"(1.) the manufacture, sale or consumption of commodities within the country,

"(2.) upon licenses to pursue certain occupations, and

"(3.) upon corporate privileges" (*Flint,* p. xvii).

In identifying and describing the nature of an excise tax, *Flint* (p. xvii) held that being required to pay such taxes involves privilege, and, if privilege is not involved with taxation, no such tax is payable.

If the so-called "income" tax on wages is not an excise tax (indirect tax on privilege), then it presumably is a direct tax (the only other tax authorized by the Constitution), which the Courts have already ruled is unconstitutional (*Brushaber,* p. ix.).

Among the many other consistent rulings, this Court confirmed that "the 16th Amendment must be construed

in connection with the taxing clauses of the original Constitution" (*Eisner,* p. xv), and "if the statute plainly violates the stated principle of the Constitution . . ." the Court "must so declare" (*United States v. Butler,* p. xxxviii.)

Petitioner asks this Court to also consider the logical impossibilities inherent in some assumptions that are often made by Respondent and the lower Courts regarding the 16th Amendment:

a) If this Court ruled that the 16th Amendment granted "no new power of taxation" (*Evans,* p. xvi), and brought "no new subjects under the taxing authority" of the federal government (*Bowers,* p. ix), then it could not be said by Respondent that the 16th Amendment was the authority to claim that every individual was a "taxpayer" (Question 17, p. 26), and was newly subjected to a direct, unapportioned tax.

b) As this Court has ruled in the above, it would be a logical impossibility that millions of new wage earners were newly brought under the taxing powers by the 16th Amendment.

What the *Brushaber* (p. ix) Court is clearly saying is that any income tax which has been structured as an excise tax, but is enforced in such a way as to effectively convert the tax to a direct tax, would cause the Court to declare it unconstitutional due to lack of apportionment (*Fairbanks,* p. xvi).

What type of enforcement might effectively convert an excise tax to a direct tax? Once the demand for the tax money is unavoidable—and Petitioner, or any citizen, can no longer avoid the demand and/or the collection of the tax, even when not engaged in any excise taxable activity (like purchasing alcohol, tobacco and firearms: an excise tax on privilege protected by government)—that is when

the tax has been converted, in substance, from an excise tax into a direct tax, which is now unconstitutionally being applied to Petitioner and *all* Americans.

The fundamental questions in this challenge are these: Is the "income" tax a direct tax which must be apportioned by population, or an indirect/excise tax on privilege which must be uniform across America? Or is it being applied in some other class of taxation not declared in the Constitution?

Question 2 discussion: Over the decades, since the early 1900s, the definition for what is called "income" has been distorted from original intent, and what was well known by the Courts, Congress and the People. Respondent has consistently claimed that "income" includes wages, salaries and compensation for services. However, this "interpretive regulation" is trying to "make income of that which is not income," according to the 16th Amendment (*Helvering,* p. xx).

When challenged with this question, Respondent has provided nothing in response but hearsay and presumption, which is not evidence (*A.C. Aukerman,* p. vii; *Del Vecchio,* p. xv; *New York,* p. xxviii). Presumption is *not* "a means of escape from constitutional restrictions" (*Heiner,* p. xx). "Presumption" does not replace the burden of proof or rebuttal.

Respondent claims that "all that comes in" as wages, salary or compensation for service is "income according to the proper definition" of what it classifies as "gross income" and is subject to its taxation scheme, contrary to *Doyle* (p. xv), in defining "income."

Originally, "income" was classified as "gains and

profits" from "corporate activity" (*Merchants,* p. xxvii), unearned wealth or assets arising from the "source" of the lawful "income" (45 Congressional Record. 4420-4423, p. vii).

Precedent shows that lawful "income" is "the gain derived from or through the sale or conversion of capital assets: from labor or from both combined" (*Taft,* p. xxxiv). What defines income "must have the essential feature of gain to the recipient" (*Conner,* p. xii; *U.S.C.A.,* p. xxxviii).

For Respondent to consider wages as all "gain" or "profit" is to distort the definition of income. This Court stated it did not accept the idea of a tax on occupations and labor (*Pollock,* p. xxix).

Income was clearly classified as "gains and profits," which "limit the meaning of" income. Income was not "everything that comes in" (*Southern Pacific,* p. xxxiii). It was understood to be a "tax on the yearly profits arising from property, professions, trades, and offices" (*Black's,* p. viii).

Respondent claims that wages are "income" and that "deriving" income as the 16th Amendment states equals the wages one receives from work, yet the Courts have clearly stated that one does not "derive" income through work (*Edwards,* p. xv).

In matter of fact, there is "no material difference" between Petitioner's, or any American's, labor and what he receives as wages. Thus, there is no lawful "income" (profit). (Material difference is discussed thoroughly in *Cottage,* p. xiv.) People's labor is merely "exchanged" for money (*Coppage,* p. xiii).

Labor is property (*Butchers' Union Co.,* p. xii; *Slaughter House,* p. xxxiii) and is like "a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree;

income the fruit" (*Waring,* p. xl). Selling labor is no different from selling goods (*Adkins,* p. vii). Wages and salaries for labor represent the conversion of property but realize no gain in that mere conversion.

Labor, being "property," is the tree from which "income" or "gain" can be "derived," if it is used for that purpose, but for Respondent to claim it can tax the whole "tree" (wages) as "profit" is tantamount to claiming limbs of the tree are always "profit" and removing them, limiting any hope of fruit—true "income," or "gain," from those limbs—or *more* lawful income to government, and not impoverish citizens.

Recognition of the inherent elements of wages and personal costs to produce labor is vital. It is patently unjust, unconscionable and unfair to force people to offer up all their wages as pure "profit" when there are ample "costs" related to the production of labor. "The freedom and right to earn a living through any lawful occupation is exempt from taxation by the federal government." (*Grosjean,* p. xviii; *Coppage,* p. xiii).

In 1939, "only 3.9% of the population" of the United States were covered by the income tax . . . only a small portion of the population" (Treasury Department's Division of Tax Research, p. xxxv).

How can that be when far more than 3.9% of Americans in 1939 provided labor or services for wages? That is because wages were not then, and are not today, lawful "income," and only 3.9% of the population in 1939 were wealthy enough to actually have true "income" (unearned wealth, or a corporate profit) or income "derived from" their principal, or savings).

The term "income" was never meant to include principal, or what are wages, as there was a clear "distinction

between income and principal" (1913 Congressional Record, p. vi). This Court has also always made a clear distinction between "profit" and "wages." Wages were not "profit" and could *not* be taxed (*U.S. v. Balard,* p. xxxvi).

Income is "not a wage or compensation for any type of labor" (*Staples,* p. xxxiii). "Reasonable compensation for labor or services rendered is not profit" (*Laureldale Cemetery,* p. xxv).

People of the early 1900s understood that the "new system" of taxation would not involve wages or salaries as "an income" (*Gov. A.E. Wilson on the Income Tax,* p. xviii). The right to work and receive wages for labor "cannot be taxed as privilege" (*Jack Cole,* p. xxv; *Coppage,* p. xiii).

Respondent's own code (1939) stated in Section 22 GROSS INCOME:

(a) "Gross income includes gains, profits, and income derived from salaries, wages, or compensation for personal service . . ."

Gains, profit and income are redundant terms and confuse the lawful definition of what a "profit" is because it is the same thing as "gain," or "income." They all mean the same thing. Defining it in 1939, Section 22 shows there was a clear difference between "profits" and "wages."

If "gains, profit and income" are synonymous with "salaries, wages, or compensation," why state "derived from"? One does not "derive" income *"from"* a wage if they lawfully mean the same thing. If wages *are* income already, why use the term "derived from"?

Gross "income" includes gains, profits and income "derived from" salaries, wages or compensation for personal services, and "salaries, wages or compensation for personal service are not to be taxed as an entirety unless in their entirety they are gains, profits and income"

(*Lucas,* p. xxvi). It should also be noted that "gross income" also includes that which is derived from a corporate profit, or unearned wealth, as elsewhere argued, but something conspicuously missing from the definition.

The wages Petitioner or any American makes cannot be counted in their entirety as a "profit," for this makes labor worth nothing (zero basis for labor costs to wage earned), which is nothing more than slavery.

A direct tax on wages is a tax that diminishes the source of potential "income" and has been declared unconstitutional. An indirect tax on wages is unconstitutional because an indirect tax is a tax on privilege; i.e., wealth-producing unearned income, or in making a corporate profit, neither of which Petitioner (or most Americans receiving wages) is involved with. Lawful taxation leaves the source (wealth, property or limbs growing from the tree) producing the "income" undiminished, and taps the true income "derived from" the source—the actual fruit coming off the "tree."

Twice during the debates on the 16th Amendment, Congress rejected the idea of bringing direct taxes within the authority of the 16th Amendment. Then twice more, on July 5, 1909, Congress rejected the idea by direct vote of the Senate (S.J.R. No. 25 and S.J.R. No. 39).

This argument by Respondent was in response to the question put to the Court by *Peck* (p. xxviii) as to whether the 16th Amendment created any new taxing power, which the Court stated clearly it did *not.* Thus, Respondent has clearly distorted and obfuscated the original intended definition of "income."

Petitioner cannot declare he has "income" when he does *not* have any, in violation of his conscience and to

not present false testimony via the 1040 form under penalty of perjury.

Who is Petitioner to believe and how does he act when confronted with this Court's and other Courts' long-standing decisions? (A 64-page brief on "income" is in previously named Court documents for more detail.)

Finally, it must be noted that the law provides for protection from taxes upon income "excluded by law" (Treas. Reg. §1.61-1, p. xxxvi) and income "not taxable by the Federal Government under the Constitution" (Treas. Reg. §1.312-6[b], p. xxxvi). It is Petitioner's contention that these exclusions have not been lawfully determined as yet, and the issue of "income" may fall under these regulations.

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Question 3 discussion: Respondent consistently fails to substantiate the 1040 form itself, since it presently exists as a "bootleg" form, according to Congress and 5 C.F.R., since it does *not* conform to the Paperwork Reduction Act requirements for all information collection forms. The 1040 form contains no valid OMB number and does *not* inform the public or Petitioner that they do *not* have to comply if no valid control number is listed (44 U.S.C., p. vi).

"Information collection requests which do not display a current control number or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public" (Senate Report analysis of §3512, p. xxxii).

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Question 4 discussion: Respondent has been acting under the name "Internal Revenue Service" and promoting policies and inflicting punishment under the

same name, all the while knowing, or surely having should known, that this entity was "canceled" in 2005 (*TREASURY ORDER:* p. xxxvi), and yet the Respondent has been continuing to mislead Petitioner and the public, using the terms "IRS" and "Internal Revenue Service" (18 U.S.C. §1342).

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Question 5 discussion: Respondent is purporting itself to be an agency of the U.S. Government and yet denies the same (*Diversified Metal Products,* p. xv).

Petitioner maintains that Respondent is contradicting publicly stated information, using "government" status to be acting, or to position itself in some other deceptive way. Respondent cannot have it both ways. What is Petitioner to believe and act on here, and what protection does Petitioner, or any American, have under such *prima facie* evidence of fraud?

Question 6 discussion: Petitioner calls into question IR Code 6201 (p. xxiii), which clearly states that any assessment is related to any taxes "which have not been duly paid by stamp" and "taxes shown on returns." Petitioner has never been lawfully liable for paying any tax by "stamp" and has never been proven to be lawfully required to file a 1040 form for such assessment by the "Secretary," thereby making any "assessment" against him outside law.

Nevertheless, in the case this is not valid in this instant case. Respondent failed to provide lawful assessment despite Petitioner not only requesting same in past years, but also raised this question in the Tax and Appeals Courts, which were ignored. The law is clear on requirements for any alleged lawful assessment against any American (IR Manual 3[17], p. xiv).

Form 23C is used to officially assess tax liabilities. Any assessment is "invalidated due to the lack of a signature on the 23C Form," and this "defect" was a "significant violation of the regulation requiring a signature" (*Curley,* p. xiv). Further, the procedures for the Form 23C, as required by 26 CFR §301.6203-1.3, is a "factual question" concerning whether IRS procedures are correct (*Brewer,* p. ix), and that these forms "demonstrate that a valid assessment was made" (*Huff,* p. xxiii).

In this instant case, there is no payment as "tax stamp" required of Petitioner, but no Form 23C on which a signature from someone presumably with firsthand knowledge was not provided, and no form 4340 Certificate.

Question 7 discussion: Respondent throughout its response used the word "frivolous" regarding the position Petitioner takes on some of the issues, yet defaulted with no reply or rebuttal to this Court's previous rulings, which lower courts *must* acknowledge, and, in effect, also called these same Court rulings as "frivolous."

Can Respondent simply dismiss this Court's, and other Courts', previous rulings? Not one shred of evidence has ever been presented from the cited Court cases to prove in what "way" Petitioner's questions were "frivolous," in contradiction to the lawful claims. Simply "claiming" something to be "so," and stating it repeatedly, doesn't make it so, even in the Courts.

To Petitioner's knowledge, these collective challenges, with Court evidence in support, have never been before said lower Courts till Petitioner's cases, and most, if not all, negative rulings were apparently made acting through presumption of "everyone knows that . . ." rather than requiring evidence in fact to be provided to the

Courts to prove the Respondent's or Court's presumptions. The use of previous Court rulings that were themselves "frivolous," and used to void judgments with no evidence, are not evidence in fact.

Respondent has steadfastly refused, over and over again, to publicly address the many citizens who are questioning these same "frivolous" things, and, thus, due process and "Redress of Grievance" are simply being denied to Petitioner and all Americans.

Respondent, since the mid-1990s, was continually challenged to publicly, clearly and openly answer these and other related questions, yet, when it agreed to do so and the time came, it canceled the public meetings three times to Petitioner's knowledge and belief. The "We the People" foundation (givemeliberty.org) was instrumental in organizing these meetings for redress, only to be negated by Respondent by default in its agreement to provide simple, clear answers to the public. David Johnston of *The New York Times* asked an IRS senior official, Terry Lemons, "Why won't the IRS answer the questions set forth in the petitions from We the People Foundation?" Lemons said the government is answering the Petitions through "enforcement actions."

Question 8 discussion: Respondent is responsible to know its own laws, its own constitutional limitations, and the original intent of Congress, which must be followed (*Mattox,* p. xxvii). Respondent should have shown more good faith in dealing with Petitioner, and all Americans (*U.S. v. La Salle,* p. xxxix), in providing clear, lawful information rather than being silent in its fiduciary obligations. To do otherwise is clearly fraud against Petitioner. The courts have clearly stated that "deliber-

ate concealment of material information in a setting of fiduciary obligation" is fraud (*McNally,* p. xxvii).

This Court chastised Respondent previously in its duty to provide information and ordered it not to be silent "where it had a duty to act" (*U.S. v. Tweel,* p. xxxix). The Courts are clear on preventing "arbitrary exercise of administrative power" (*United States v. Morton Salt Co.,* p. xxxix).

Given evidence herein, Respondent has failed to comply with this Court's ruling, and this suggests ongoing willful, wanton disregard for the Supreme Court's decisions, and its own Regulations.

Question 9 discussion: The Tax Court, Appeals Court, other named Courts, and Respondent, failed to prove the threshold issue of standing to assess deficiencies against Petitioner prior to ruling. All challenges to standing were immediately made regarding Respondent's authority and jurisdiction to bring summons, and then deficiencies, against Petitioner, and Petitioner had no means to obtain due process except through suit in the Courts.

Burden of proof is on Respondent to present in the record such rebuttal proof to assess Petitioner when challenged (*Hagans,* p. xix), and on the Courts to "assure that standing exists" (*Summers,* p. xxxiv), even if not challenged, but all the Courts erred in not viewing the substantive elements of this issue requiring proof of standing from Respondent to be attacking Petitioner under color of law and avoiding and circumventing due process of law.

This Court requires proof of authority in assertions of power by anyone dealing with a person claiming government authority (*Federal Crop,* p. xvi), and that "no

sanctions can be imposed absent proof of jurisdiction" (*Standard,* p. xxxiii).

"Mere good faith assertions of power" by the Respondent "have been abolished" (*Owens,* p. xxviii). The law provides that, once State or Federal jurisdiction has been challenged, it must be proven (*Main,* p. xxvii). If the Respondent has standing (through jurisdiction and authority) to bring deficiency assessments against Petitioner, or *any* other American, especially outside lawful or constitutional channels, it is not of record and has not been proven.

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Question 10 discussion: Respondent filed its response to Petitioner's documents claiming that he failed to comply with Rule 34(b). Petitioner was confused by the Respondent's failure to provide response to the evidence presented, and with the focus alone on "Rule 34(b)," when Petitioner clearly "stated a claim upon which relief could be granted." Petitioner filed a "motion for clarification" on Court jurisdiction, and Petitioner's options, and for an enlargement of time with the Tax Court, due to being provided an opportunity to file an "amended" petition.

This was not clear to Petitioner, and he asked for some basic clarification regarding what constitutional standing the Court had, if any, to address Petitioner's constitutional questions and challenges on Respondent's standing and the issues so he could properly prepare the amended petition, or take other legal steps.

The Court granted an enlargement of time, but Petitioner received no apparent ruling or response from the Court on the request for clarification.

Petitioner, again, filed a second request for clarifica-

tion, with no response from the Court notifying him of any ruling on this as well and, thus, filed a "Motion to Compel Ruling on Request for Clarification."

Petitioner was denied this motion with no explanation. Petitioner later discovered that said original "Motion for Clarification and Enlargement of Time" was immediately stamped as denied upon initial filing in the Court, but with no *notice* of this to Petitioner, except for contradictorily granting the Enlargement of Time. (Please see discussion No. 14 on improper notice, p. 23.)

Respondent wanted to understand whether the Court could or would address the constitutional challenges presented.

Petitioner believes this failure to respond to requests for clarification on basic issues of the Court's constitutional jurisdiction to address constitutional questions raised—and on Rule 34(b) in regard to the original standing challenge, which was completely ignored by the Court—deprived Petitioner, once again, of proper due process. How many others have been deprived thus in the Tax Court?

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Question 11 discussion: Respondent presented hearsay presumption that Petitioner was liable to file a 1040 form but failed to provide any law, IR Code or other lawful proof, making Petitioner personally liable to do so, despite almost 10 years of certified requests for same. Attempting to read, let alone understand, the IR Code leaves confusion for most Americans.

The IR Code's 64,000 pages is an amalgam of fractionated, distorted and obfuscated terms and alleged requirements which has no clear statutory construction regarding Petitioner's personal, private liability to file a

1040 tax form—unlike the clear statutory liability which is declared for alcohol, tobacco and firearms taxation, among others. The "Void for Vagueness doctrine may be from uncertainty in regard to persons within the scope of the act . . ." (*Winters,* p. xl), and such vague laws as personal liability not being clearly established "suffer a constitutional infirmity" (*Ashton,* p. viii).

Under the Brown and Chevron tests for statutory basis for agency authority, under the void for vagueness doctrine, the maxim of "the expression of one thing is the exclusion of another," and under the clear-language doctrine, if clear congressional intent to name the Petitioner as a subject to an income tax cannot be readily produced by the Respondent, and if no express legislative permission to operate outside Title 4 (p. xxxv) is readily disclosed, due process requires all assessments and alleged liabilities and requirements against Petitioner be nullified as unlawful.

If the laws do not afford the average person the ability to discern what is actually expected, and see how he is clearly affected by said law, then such "laws that do not are void for vagueness" (*Grayned,* p. xviii). What does not exist in statute does not exist at all (*FDA,* p. xvi).

Lastly, the Courts have declared that if there is any doubt as to the construction of a statute, "the doubt should be resolved in favor of the taxpayer" (*Hassett,* p. xix) (if such "taxpayer" status can be proven—Petitioner), and that it is an "established rule not to extend their provisions by implication beyond the clear import of the language used." If ambiguity exists, and in the IR code it clearly exists, it must be "construed most strongly against the government and in favor of the citizen." (*Gould,* p. xviii).

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Question 12 discussion: Due process is the right 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," and, if presumption is the evidence basis of alleged facts, then "this is not due process" (*Black's,* p. viii).

The District, Tax and Appeals Courts showed extreme bias against Petitioner that any reasonable person can plainly see, and this Court affirmed that "justice must satisfy the appearance of justice" (*Levine,* p. xxvi). Petitioner filed for recusal of judges twice on this issue, and, once, it was apparently granted (see Tax Court docket showing transfer), but this changed nothing, showing no attempt at "justice" or due process in this instant case.

The Courts have ruled that only if it appears "beyond doubt" that the plaintiff (and this should certainly hold true for Respondent) can "prove no set of facts in support of his claim which would entitle him to relief" (taking Petitioner's property) can the Courts dismiss the case or ignore the evidence (*Conley,* p. xii). Petitioner has a plethora of evidence herein and presented to all the lower Courts proving his "set of facts" but believes "fraud on the Court" has occurred because proper procedures and compliance to law were not complied with (*Bulloch,* p. xi).

This Court stated that not being able to be heard in the Courts on the matter in controversy—and Petitioner having to refuse to comply with some alleged duty in order to be heard, which has surely occurred to Petitioner—"runs afoul of due process" (*Schulz,* p. xxxii).

Because the lower Courts have consistently ignored and denied Petitioner "an opportunity to be heard and to enforce and protect his rights" (*Kazubowski,* p. xxv), and refused to review the entire evidence record, they have

thereby denied due process to Petitioner, and, likely for many decades, all the American People.

Only through *not* complying with alleged "laws" was this able to be brought to this point before the lower District Courts, Tax Court and Appeals Court, where the Respondent claims "answers" would be provided, where "fundamental fairness and substantial justice" should occur (*Vaughn,* p. xl), but haven't been thus far, and now before this Court. Can this occur in *any* Court in this nation today?

This Court has stated that the Courts are "free to disagree with the administrative enforcement actions if a substantial question is raised" (*United States v. Morton Salt Co.,* p. xxxix). Clearly substantial questions have been raised in the nine Courts to date, yet no alleged "answers" from Respondent or the Courts, supported by evidence in fact, have been forthcoming to date.

"Fundamental fairness and substantial justice" were denied Petitioner by every named lower Court despite being a constitutional right guaranteed Petitioner that prohibits the federal and state governments, respectively, from depriving "any" citizen of life, liberty or property, without due process of law according to the Constitution.

Question 13 discussion: In being allegedly compelled to file a 1040 form by Respondent, Petitioner is providing evidence that can potentially be used against him, contrary to his 5th Amendment rights to not be forced to be witness against himself. The information revealed in the preparation and filing of an income tax return is, "for the purposes of Fifth Amendment analysis, the testimony of a witness" (*Garner,* p. xvii).

Petitioner cannot file a 1040 form without giving up

his 5th Amendment right to not testify against himself. The "line is drawn at testimony that may expose Petitioner to prosecution" (*Hale,* p. xix). This is the case against many millions of Americans who "voluntarily"—under duress of prosecution under color of law and the false belief they are required to do so—file the 1040 information collection form.

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Question 14 discussion: Respondent and the Tax Court failed to provide proper Notice of Service of Order and Judgment to Petitioner. (Please see Tax Court docket and documents filed.) Instead, Petitioner learned after the fact that when he filed his responses, and the Court accepted them into the record per email notice of acceptance, the Court stamped "denied" on the lower right corner of Petitioner's response but failed to notify him of this denial being immediately applied at the time of acceptance of the filed documents.

Of course, Petitioner had no way of knowing such a "denial" stamp had been simultaneously placed on the documents as they were being filed, and certainly had no initial reason to go back and download his own documents to review. This seemingly deliberate and deceptive practice caused weeks of lost time for response and filing of other motions, etc., because Petitioner was waiting for notice of a response or ruling, which was never properly provided.

Petitioner notified the Court of these multiple errors, but it failed to respond. How many other Americans are so treated by the lower Courts in their pursuit of due process?

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Question 15 discussion: Respondent is presuming

Petitioner is a 14th Amendment citizen, under the federal government "jurisdiction thereof," but there is no evidence in fact that forces Petitioner, unconstitutionally, into a contract or other agreement with the Respondent in any way.

Contrary to today's conventional wisdom, Respondent's jurisdiction, being an alleged branch of the U.S. government or not, does *not* extend into state jurisdiction in this issue. "The United States," a corporation and *not* a land mass (*Republica,* p. xxxi), is a creation which is extending its reach outside its jurisdiction by "breaking down the lines which separate the states and compounding them into one common mass" (*McCulloch,* p. xxvii).

The 14th Amendment merely created a jurisdiction for blacks (*United States v. Wong Kim Ark,* p. xl) and created "two classes of citizens, one of the United States and the other of the state" (*Cory,* p. xiv). This had nothing to do with jurisdiction over state citizens at the time (*Van Valkenburg,* p. xl) and should never have been enlarged as it was into the states and over independent state citizens.

Prior to the 14th Amendment, a citizen of the state was also considered a citizen of the United States—the several states—and meant the same thing (*44 Maine,* p. vi), but was surreptitiously extended to all state citizens, who were distinct from this federal citizenship, all in an effort to create a federal jurisdiction into the states which the Constitution does not support, nor which jurisdiction Respondent nor the U.S. government has a proven jurisdiction (Article 1, p. vii; Title 4, p. xxxv; *CAHA,* p. xii). Most state citizens are *not* located in, or under, this federal government jurisdiction.

After the 14th Amendment was allegedly ratified, there were suddenly two citizenships: a "citizenship of the United States and a citizenship of a State" (*Slaugh-*

ter House, p. xxxii), and citizens unknowingly (through fraud) were forced into "contract" (more fraud) through being forced to be a "citizen of the federal government" (*Kitchens,* p. xxv) and subject to its governmental 14th Amendment "jurisdiction thereof." It is preposterous to even consider that the created federal government can become master over the creator, the People, and create its own citizens, subject to its jurisdiction, but this is what has been foisted on Americans.

Petitioner denies being a citizen of the federal government (*U.S. v. Cruikshank,* p. xxxviii) and is presently a citizen of the sovereign Republic of Colorado only (*Thomas,* p. xxxv; *Crosse,* p. xiv) and does not fall within the jurisdiction of the federal government. Petitioner has established in the Courts, and public record (see Appendix D) that he is *not* a 14th Amendment citizen and therefore is *not* under the 14th Amendment federal "jurisdiction thereof" of Respondent.

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Question 16 discussion: Respondent, in responses to the Tax Court and Appeals Court, labeled Petitioner a "tax protester" contrary to regulations which prohibit the IRS from using "Illegal Tax Protester" or any similar derogatory designations (Treasury Inspector, p. xxxv). Such labeling creates a bias in the Court's eyes, and creates presumptions regarding all Americans which are never proven by Respondent.

Respondent routinely uses such labeling against any challenges to its tax scheme under constitutional law, creating the impression that anyone questioning confusing and conflicting issues is some "anti-government," or "anti-tax" citizen. This is simply not true. Petitioner certainly claims to be part of the "Tax Honesty Movement,"

but that is far different from a "tax protester" not wanting to pay lawful taxes. All we want is truth under law and constitutional parameters to be complied with in lawful taxation.

Petitioner does *not* suggest there is no lawful means for taxation in this Republic, and never has. On the contrary, there are certainly constitutional and lawful taxation processes clearly designated in the Constitution. The issue is of "lawful" taxation for lawful expenditures by government "consented to" by We the People. Petitioner does *not* consent to unlawful taxation or expenditures.

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Question 17 discussion: Respondent persists in hearsay and presumptively labeling Petitioner as a "taxpayer," but has consistently failed to provide any mechanism of law which makes him so, despite requests for such. Where is the law that makes Petitioner a "taxpayer" as compared to a "non-taxpayer"? (*Long,* p. xxvi; *Economy,* p. xv). Petitioner holds that he is a "non-taxpayer" until made one through the mechanism of law or personal action which is *not* in evidence. Just because Petitioner is a citizen, and breathing human, of one of the several united States doesn't automatically make him a "taxpayer" subject to Respondent's federal jurisdiction.

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Question 18 discussion: The First Amendment—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."—guarantees and secures Petitioner's right to religious expression so long as it does not damage others or violate another's constitutional rights.

The free exercise thereof includes how one interacts

with others, how one practices his faith and beliefs and how one spends or utilizes his money based on his beliefs. If "no law" can be made that would interfere with this "exercise," how can Respondent implement such an alleged "law" against this free exercise, if Petitioner has a 30-plus-year history of not supporting such unlawful things? Petitioner's belief includes (but is not limited to) obedience to original law and the Constitution as provided through God's inspiration.

This Court ruled recently (9-0) that religious beliefs and practices trump government interference, and that the Courts, or government, cannot presume to force its will in the area of free exercise of religious beliefs and practices (*Hosanna-Tabor,* p. xx).

Petitioner could point to a large number of provably unconstitutional expenses allegedly funded through "income" taxation, to include (but not limited to) the unconstitutional private corporation known as the Federal Reserve, the funding for illegal, unconstitutional, undeclared wars and military branches, abortions and abortifacients (Obamacare), and many more unconscionable and unbiblical practices which government deals with every day, far beyond the "general welfare" clause. To force Petitioner to pay an unconstitutional tax to be spent on unlawful and unbiblical projects is a gross violation of the 1st Amendment as this Court clearly stated.

Public Law 97-280, 96 STAT (p. xxx) declared the Bible the word of God, and that it "made a unique contribution" in the shaping of America and Americans. Petitioner still stands upon this same Bible and its teachings in shaping his actions and beliefs, and in his stand against the unconstitutional, unconscionable lawlessness and unbiblical actions presented by Respondent against him and all Americans.

In a similar vein, many recent suits have been filed which address religious beliefs (not yet adjudicated) which show the mind of the American People on this issue.

Clearly, this Court will be presented with the constitutional challenge of religious grounds for defending citizens' positions and beliefs, and, herein, can "nip it in the bud" and stop the transgressions against not only religious beliefs but federal unconstitutional encroachments and due process violations.

Petitioner cannot comply with illegal, unconstitutional taxation requests and unjust expenditures without violating his religious and biblical beliefs, and Respondent has no authority or jurisdiction to force Petitioner or any American to go against their conscience and religious beliefs and practices.

———◆———

Question 19 discussion: Petitioner requested to introduce new evidence (including four or five Amicus Curiae briefs and other evidence documents) into the Tax and Appeals Court, which were denied. These documents would have provided much more evidence of the tax scheme being unlawfully and unconstitutionally applied, and severely violating due process. Petitioner requests said evidence be allowed herein for the sake of truth and justice and complete proof of claims.

———◆———

Question 20 discussion: Under the 1999 IRS Restructuring and Reform Act, IRC 6320, 6330, Respondent is required to immediately, upon the filing of a notice of federal tax lien, and prior to the issuance of a levy, provide notice regarding a (proven) "taxpayer's" right to an independent hearing in the Appeals Office.

On April 25, 2005, Respondent filed said Notice of Federal Tax Lien (copy in Archuleta County Recorder's Office, #21204348), but failed to provide a due process hearing opportunity notice to Petitioner. Petitioner even requested such hearing several times in previous certified documents to Respondent, but no opportunity was provided. The bank receiving said "tax lien notice," after 21 days, and after *notice* provided to bank of its potential unlawful compliance error and fiduciary duty breach, released $500 of Petitioner's funds to Respondent.

This is just another example of Respondent's failure to comply with its own laws because of the fear and intimidation it causes even in the banking industry, which has no legal duty to comply with what is simply a "Notice" of federal tax lien and *not* a legal lien.

Most county recorders file a "notice of tax lien" as an actual lawful "lien," which is a violation of security laws, and most banks fear standing up to Respondent and simply hand funds over to Respondent without the slightest due process or ability for Americans to defend against this abuse of power. Respondent gets the banks to do the dirty work because it knows said "notices" are actually treated as valid liens and the banks will act on them under color of law. (Ample documented evidence can be provided of this ongoing fraud as well.)

CONCLUSION

The issues herein are certainly not on equal footing with each other but are certainly related and relevant to showing the depth and extent of the violations of law and the presumptions made by Respondent. Petitioner has formed, in good faith and without any criminal intent

whatsoever, his position on these issues, using this honorable Court's own rulings, among many other sources.

Petitioner's challenges are not "frivolous" and are, in fact, based upon a reasonable reading and interpretation of valid and extant statutory and jurisprudential authorities.

The gravity of these fundamental law questions have never been properly adjudicated, apart from court hearsay and presumption, and the evidence in fact available proves without a doubt that the taxation scheme being implemented against Petitioner, and all Americans, is fundamentally and profoundly unlawful, unconstitutional, unfair and biased, and is evidence of ongoing, willful, wanton, deliberate and unconscionable fraud:

- Petitioner was denied due process over and over again.
- Petitioner's evidence was dismissed without consideration.
- Petitioner was unlawfully assessed.
- Petitioner's evidence that "income" is not wages is clearly supported by Court precedent.
- Petitioner was mistreated, and the Courts unlawfully ruled without regard to Respondent's standing to be acting against him in filing deficiency notices, or due process of law.
- Respondent is taxing outside clear constitutional parameters, presumptively labeling him, and all Americans, as "taxpayers" apart from any mechanism of law.
- Respondent is wantonly promoting the mandatory filing of the 1040 form, which is clearly in violation of the Paperwork Reduction Act.

- Respondent has not produced the law within the IR Code which makes Petitioner or any American "personally" liable for filing the 1040 form, let alone other "requirements."
- Respondent is presuming Petitioner is in its jurisdiction, apart from obvious physical, Constitutional and lawful facts that he is not, and nothing in the record proves such jurisdiction.
- Respondent is wantonly ignoring this Court's historical, well-settled decisions.
- Respondent claims it is a U.S. government agency, yet also denies being so.
- Respondent is using the name "IRS" despite its being canceled in violation of 18 U.S.C. law.
- Respondent failed to rebut Petitioner's affidavit, thereby, via default, accepted that all unrebutted affidavit evidence is true, yet this was ignored by Respondent and lower courts.
- Respondent is denying Petitioner his 1st Amendment rights of practice of religion and to not violate his conscience, or violate fundamental law, in witnessing against himself as actually having lawful "income" and committing perjury in so doing, and paying an unlawful tax.
- Respondent is claiming a jurisdiction in States and over Petitioner and all Americans without statute or evidence and, in fact, acting outside its lawful jurisdiction.

This is a series of ongoing, egregious wrongs that have landed many people in prison for attempting to comply with the fundamental law of the land, and in challenging Respondent where it is clearly wrong, and

even where it is maliciously covering up the evidence. The courts are full of this evidence.

Recent wins by Joseph Bannister, Tommy Cryer, Vernice Kuglin and others against Respondent show the fraud and the fact that Respondent cannot prove its position in criminal Court and must rely on administrative disinformation still entrenched in our courts and society to continue the scam and harm to our citizens.

Unless these basic questions are addressed, based on well-settled case precedent, and this Court is willing to look at its own rulings that invalidate Respondent's taxation scheme and the clearly contradictory lower court rulings, this wrong will continue to destroy families, wealth and the economic future of more than 330 million people in our Republic.

Millions of manhours are spent by citizens each year on complying with this scheme (with no compensation), and millions are walking away from it after researching the mounds of evidence now available via computers, the Internet and law-research capabilities. It is a jigsaw puzzle that has been purposefully hidden, scattered and obfuscated, but which is now being brought together.

Millions of Americans are learning of these truths from a thousand web sites, attorneys, judges and others providing the case law and statutes for proving the facts. The truth will be exposed, sooner or later, and this Court has the opportunity to act on it now.

Respondent intimidates Americans, creating fear through its campaigns. Respondent fits the government's own definition of "terrorism" (United States Code, p. xxxvii).

The logical question to ask is, If Petitioner is violating any laws, why is he *not* charged with criminal actions?

Why is Respondent taking the circuitous route of using "administrative" ploys like "summonses" and "deficiency" notices? The answer is because it has deceived the Courts and knows it has accomplices in committing this easy fraud using them, and it knows it cannot bring criminal charges against Petitioner due to the record created by Petitioner proving no such "failure" would stand up in Court but would expose the "income" taxation scam and other violations of law to the public at large.

Why would Respondent not respond to Petitioner's requests if it was acting in good faith and was standing on the Constitution and rule of law and wanted the truth to be known?

Is there a law making Petitioner personally liable for filing the "income" tax" form, or not? Is "income" actually all wages, salaries and compensation for services, or is it something altogether different, but has been perverted over the decades, and essentially draining the wealth of America away under color of law? This scheme deliberately impoverishes more than a million Americans who have been deceived into complying and "self-assessing" for "income" they do not lawfully or constitutionally have.

The *only* way Petitioner, or all Americans, can receive proper due process of law on this issue is for this Court to address the Constitutional challenges made, and for all the evidence in support of Petitioner's contentions, which are well documented, to actually be looked at and compared to this ongoing egregious, unconscionable abuse of power under the color of law.

We have all been deceived and misled and misinformed, apparently with willful, wanton intent—clearly a "racket" (18 U.S.C.) involving every State citizen, and many government agencies and officials and even the courts themselves.

The courts across this country have been misled and deceived by Respondent and have, therefore, persistently ruled in error on the merits of these and thousands of other Americans' arguments, yet based on hearsay and presumption and *not* on the actual facts available.

Correcting this egregious error could fundamentally transform the economy, fundamentally transform the lives of every man, woman and child in this country, fundamentally transform the relationship between the people and government and fundamentally transform America's growing dissatisfaction with the biased courts.

This obfuscation, this fraud, this clearly unlawful and unconstitutional scheme is being vetted and will continue to be until it is corrected. Will this Court defend the American People, our Constitution, our rule of law, and apply the law in our favor and stop this abuse, or will far more acts of violence, theft and abuse be allowed to carry on?

Will this Court create a legacy that will never be forgotten, or will it discard this unprecedented opportunity to right what is perhaps the most fraudulent scheme ever foisted on the Republic?

Will those in prison for alleged "criminal" tax evasion or other alleged wrongs be allowed to remain in prison for not complying with this fraud, and properly resisting it?

Have we become a lawless people, with no means to defend our freedoms? The Respondent comes after Petitioner and other innocent Americans under color of law and yet violates its own rules and the laws of our Republic and is now being challenged for knowingly allowing $7 billion, in 2012 alone, to go to illegal aliens filing false returns. Is this just or fair?

Because Respondent has consistently ignored its due

diligence and good faith duty to verify or disprove the challenges, Petitioner respectfully reserves his rights to relief under law and justice, and to present all relief sought as part of due process, and for the Court to grant such other and further relief as is just and proper for all concerned.

"When a well packaged web of lies has been sold gradually to the masses over generations, the truth will seem preposterous and its speaker a raving lunatic" (Dresden James).

Petitioner maintains a remand is moot since no due process can occur unless the lower courts are ordered to address all questions and evidence raised.

This controversy is ripe for adjudication.

The Petition for a Writ of Certiorari and adjudication of all facts in evidence should be granted.

Respectfully submitted,

_____ Date: 02/12/2013

Jeffrey T. Maehr, Sui Juris
924 E. Stollsteimer Rd.
Pagosa Springs, Colorado 81147
(970) 731-9724

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JEFFREY THOMAS MAEHR,
Petitioner—Appellant,

No. 11-9019
(Tax Court, No. 10758-11)
(U.S. Tax Court)

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent—Appellee.

ORDER AND JUDGMENT [1]

Before MURPHY, BALDOCK, and HARTZ, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

In February 2011, the Commissioner issued notices of deficiency to Appellant, Jeffrey Thomas Maehr, for the tax years 2003, 2004, 2005, and 2006.

[1] This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32. 1.

The notices asserted income tax deficiencies and penalties for failure to file, failure to pay the estimated tax, and failure to pay the tax. Maehr filed a petition with the United States Tax Court pursuant to Tax Court Rule 34, seeking redetermination of the alleged deficiencies. He supported the petition with, inter alia, assertions the Internal Revenue Service lacked standing; the Internal Revenue Code has not been enacted into "positive law"; the Internal Revenue Service is not a lawfully created agency but is, instead, an agency of the International Monetary Fund; he is not a taxpayer because wages are not income; Form 1040 is illegitimate because it is not imprinted with an OMB control number; and the Sixteenth Amendment does not authorize the imposition of federal income taxes on citizens of the individual states.

The Commissioner moved to dismiss Maehr's petition, arguing it failed to state a claim upon which relief can be granted and failed to comply with Rule 34 because it did not contain "[c]lear and concise assignments of each and every error which [Maehr] alleges to have been committed by the Commissioner in the determination of the deficiency or liability," or "[c]lear and concise lettered statements of the facts on which [Maehr] bases the assignments of error." Tax Ct. R. 34(b)(4), (5). The Tax Court ordered Maehr to respond to the Commissioner's motion and to file an amended petition. Maehr filed an objection wherein he elected to stand on his original petition and stated it was impossible to provide specific assignments of error because "the entire assessment is in error." He also argued the Commissioner's actions interfered with his religious rights by forcing him to comply with unlawful and unconstitutional statutes against his will.

The Tax Court granted the Commissioner's motion, dismissed Maehr's petition, and found Maehr owed the defi-

ciencies and penalties set out in the notices of deficiency. In the written order of dismissal, the court concluded Maehr's petition failed to comply with Rule 34 because it did not contain specific challenges to the Commissioner's calculations or allege any facts necessary to resolve any alleged errors. The court further noted Maehr had not availed himself of the opportunity to cure his deficient petition by filing an amendment. Maehr filed two motions to vacate, both of which were denied by the Tax Court.

Maehr now appeals the dismissal of his petition, raising essentially the same points presented in his petition. This court reviews de novo the Tax Court's dismissal of Maehr's petition for failure to state a claim, applying the same standard as the Tax Court. *Fox v. Comm'r,* 969 F.2d 951, 952 (10th Cir. 1992). Although we construe Maehr's pleadings liberally because he is proceeding pro se, we conclude the Tax Court did not err in dismissing his petition because the petition did not comply with the requirements of Rule 34(b)(4) and (5). After review of Maehr's petition, we conclude it contains no valid challenges to the notices of deficiency and fails to specifically identify errors related to the determination of his income tax deficiencies. It, instead, raises conclusory challenges to the constitutionality of the Internal Revenue Code and power of the Commissioner to impose income taxes. See id. at 952-53 (holding frivolous assertions in a taxpayer's petition do not satisfy the requirements of Rule 34). The petition raises no genuine challenge to the notices of deficiency because Maehr's arguments have been repeatedly rejected by this court. See, e.g., *Wheeler v. Comm'r,* 528 F.3d 773, 777 (10th Cir. 2008) ("We have held that an argument that no statutory authority exists for imposing an income tax on individuals is completely lacking in legal merit and patent-

ly frivolous" [quotations omitted]); *Lewis v. Comm'r,* 523 F.3d 1272, 1277 (10th Cir. 2008) (rejecting argument that IRS Form 1040 does not comply with the Paperwork Reduction Act of 1995); *United States v. Collins,* 920 F.2d 619, 629 (10th Cir. 1990) ("[Taxpayer's] argument that the sixteenth amendment does not authorize a direct, non-apportioned tax on United States citizens . . . is devoid of any arguable basis in law"); *Lonsdale v. United States,* 919 F.2d 1440, 1448 (10th Cir. 1990) (rejecting arguments nearly identical to the ones advanced by Maehr as meritless and "patently frivolous").

Because Maehr's petition contains no assignments of errors he alleges were committed by the Commissioner in the determination of his income tax deficiencies or any facts upon which to base an assignment of error, the Tax Court properly concluded it failed to state a claim upon which relief can be granted. Accordingly, we affirm the dismissal of his petition. Because Maehr's motion to proceed in forma pauperis indicates he is able to pay the costs associated with pursuing this appeal, his request to proceed in forma pauperis is denied and he is ordered to pay any remaining balance of the appellate filing fee.

All additional outstanding motions are denied.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JEFFREY THOMAS MAEHR,
Petitioner—Appellant,

No. 11-9019
(Tax Court, No. 10758-11)
(U.S. Tax Court)

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent—Appellee.

Before MURPHY, BALDOCK, and HARTZ, Circuit Judges.

All relief requested in Appellant's "Response to U.S. Appeals Court, 10th Circuit's 'ORDER AND JUDGMENT' NOTICE OF JURISDICTION CONFLICT, NOTICE TO RECUSE" is denied including but not limited to panel rehearing.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk

APPENDIX C

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JEFFREY THOMAS MAEHR,
Petitioner,

KVC
Docket No.
10758-11

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER OF DISMISSAL AND DECISION

This case for the redeterminations of deficiencies is before the Court on respondent's Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted, filed June 21, 2011. By Order dated June 23, 2011, petitioner was invited to submit an amended petition. Petitioner's response to respondent's motion was filed July 21, 2011.

The 41-page petition in this case, filed May 9, 2011, does not conform to Rule 34,1 and the statements, assertions and allegations made in the petition do not give rise to any justiciable issue with respect to any adjustment or determination made in either of the two notices of deficiency to which the petition relates. Petitioner's 98 page response to respondent's motion does nothing to cure the defective petition.

Relying upon *Haines v. Kerner,* 404 U.S. 519 (1972), petitioner correctly points out that because the petition

was prepared by a self-represented litigant, the petition is entitled to liberal construction. Our obligation to liberally construe the petition, however, does not require that we rewrite it for him. *Snow v. Direct TV, Inc.* 450 F.3d 1314 (11th Cir. 2006).

Petitioner has been given the opportunity to cure the defective petition. He has failed to take advantage of that Rule's references to the Tax Court Rules of Practice and Procedure. Section references are to the Internal Revenue Service of 1986, as amended.

———♦———

SERVED Aug 19 2011

Maehr v. Commissioner

Docket No. 10758-11

———♦———

Consequently, pursuant to Rule 53, and for the reasons set forth in respondent's motion, it is

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. It is further

ORDERED and DECIDED: That for 2003, there is a $35,474 deficiency in petitioner's Federal income tax, that petitioner is liable for a $7,981.63 section 6651(a)(1) addition to tax, that petitioner is liable for a section 6651(a)(2) tax in an amount appropriately computed under that section, and that petitioner is liable for a $915.28 section 6654 addition to tax;

That for 2004, there is a $38,928 deficiency in petitioner's Federal income tax, that petitioner is liable for

an $8,758.80 section 6651(a) (1) addition to tax, that petitioner is liable for a section 6651(a) (2) tax in an amount appropriately computed under that section, and that petitioner is liable for a $1,115.56 section 6654 addition to tax;

That for 2005, there is a $34,538 deficiency in petitioner's Federal income tax, that petitioner is liable for a $7,771.053 section 6651(a) (1) addition to tax, that petitioner is liable for a section 6651(a) (2) tax in an amount appropriately computed under that section, and that petitioner is liable for a $1,385.37 section 6654 addition to tax;

That for 2006, there is a $28,181 deficiency in petitioner's Federal income tax, that petitioner is liable for a $6,340.73 section 6651(a) (1) addition to tax, that petitioner is liable for a section 6651(a) (2) tax in an amount appropriately computed under that section, and that petitioner is liable for a $1,333.65 section 6654 addition to tax.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: AUG 19 2011

APPENDIX D

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STATE OF COLORADO
COUNTY OF ARCHULETA

NOTARIAL VERIFICATION OF
ESTABLISHED TRUTH

On the date of March 12, 2012, I, Sally M. Alling, being a commissioned officer of the STATE OF COLORADO, as a COLORADO NOTARY PUBLIC, hereby verify observed facts, inspected evidence, and make conclusions verifying the establishment of the truth of Jeffrey Thomas Maehr, who appeared before me, and attests as follows:

1. A living breathing man was born on April 18, 1953, in Davenport, Scott County, Iowa, of Caucasian (white) parentage, and given the civil law name of Jeffrey Thomas Maehr.
2. Jeffrey Thomas Maehr is a living breathing man, living on the land under lex loci (law of the place) created by Nature and Nature's God, and NOT a created fiction of any entity or person.
3. Jeffrey Thomas Maehr has made a voluntary knowledgeable political determination to be one of the People of the United States and NOT a United States of America Citizen under the 14th Amendment to the 1787 Constitution of the United States for the United States of America, nor subject to the jurisdiction thereof.

Dated: March 12, 2012

Colorado Notary Public Signature

Sally N. Ailing
Notary Public
State Colorado

My Commission expires on: _____

Colorado Notary Public Printed Name

COUNTY RECORDER, PLEASE RETURN TO:

Jeffrey Thomas Maehr
c/o 924 E. Stollsteimer Rd
Pagosa Springs, Colorado [81147]