IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 17-1000T
(Chief Judge Susan G. Braden)

Jeffrey T. Maehr,
Plaintiff,

v.

THE UNITED STATES,
Defendant.

MOTION TO DENY MOTION TO DISMISS, WITH RESPONSE TO UNITED STATES MOTION TO DISMISS

Plaintiff comes before this court with this Motion to Deny United States' alleged "Motion to Dismiss," for cause, with Response in support against Defendant's allegations.

BACKGROUND

The four controversies in these issues are based on unproven allegations by defendant. The essential evidence of record at hand is as follows:

1. The defendant has assessed plaintiff's alleged "income" for almost $300,000, plus ongoing interest and penalties. Plaintiff has presented evidence that this assessment is in error and is not based on lawful "income" taxation, and is also based on an assessment of all assets, including all gross business expenses.

2. The defendant claims wages, salary and compensation for services are lawful "income, but has not provided evidence of this or evidence rebutting standing Supreme Court case law proving plaintiff's (or any private American's) wages are not lawful income as originally defined and understood.

3. Defendant claims the 16th Amendment authorizes a new "income" tax on wages, salary and compensation for services, despite U.S. Supreme Court case precedent, and without any evidence in fact in the record or rebuttal of evidence presented.

4. Defendant has challenged Subject Matter Jurisdiction based on evidence of #2 & #3. Jurisdiction is addressed beginning on P. 14 (A).

This court must be as painfully aware of, and plaintiff requests the court to take *Judicial Notice* of, the defendant's failure to answer relevant evidence by throwing every distraction, obfuscation, misinformation and even provably downright false evidence and claims regarding plaintiff's evidence and testimony into its response. Defendant should, instead, actually answer the evidence of record under due process of law and prove the deprivation of plaintiff's life assets.[1] Plaintiff prays the court will take note of the numerous obvious questions left unanswered.

STATEMENT OF THE CASE

The Internal Revenue Service (hereafter defendant), part of the executive branch of the government, being represented in this instant case by the Department of Justice, the judicial branch of the same government, counsel named below, are both attempting to challenge jurisdiction of this court on the issues previously named in the original brief, and resorting to regurgitated lower court cases which are inferior to the Supreme Court cases cited, and which are moot in this instant case**[2].** Using only lower court cases while ignoring superior and binding

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[1] The U.S. Supreme Court established the "shock-the-conscience test" in *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952), based on the prohibitions against depriving any person of "life, liberty, or property without due process of law."

[2] *Internal Revenue Manual.·4 .10.7.2.9.8* (01·01-2006). "2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code."

Supreme Court cases is prima facie evidence that defendant cannot answer the clear evidence and proof that it is acting contrary to the Supreme Court and Congress against plaintiff and any others similarly situated.

The United States Court of Federal Claims, being the "People's Court," and "Keeper of the Nation's Conscience," has jurisdiction to hear redress of grievance by the People**([3])**, and certainly plaintiff is one of the People of these united States, (standing for millions of similarly situated People of these united States), but denies he is a "United States" citizen as defendant claims**([4])**,

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[3] The First Amendment preserves the right of the People, the creators of ALL government, to receive an answer for any grievances against the servant governments: Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or abridging the freedom** of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the government for a redress of grievances**. (Emphasis added). Surely if Congress cannot stop all the above, how can other branches of government that do NOT make law do so?

[4] (See also P. 13, Motion to Dismiss) Defendant has raised the issue of U.S. Citizenship, but without defining said citizenship. This raises the issue of "which" United States is Defendant claiming to be and do they have jurisdiction and authority on over issues? A Memorandum of Law can be provided expounding on this issue alone.

The standing 1945 Supreme Court definition of the term United States, states: "The term "United States" may be used in any one of several senses. [1] It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. [2] It may designate the territory over which the sovereignty of the United States extends, or [3] it may be the collective name of the states (union) which are united by and under the Constitution. *Hooven & Allison Co. vs Evatt*, 324 U.S. 652 65 S.Ct. 870, 880, 89 L.Ed. 1252 (1945); "Union" - A popular term in America for the United States. Black's Law Dictionary, Sixth Edition. Plaintiff asks... which "United States" is defendant referring to since jurisdiction is an issue here?

28 U.S.C. Chapter 176 Federal Debt Collection Procedure, Section 3002, 15(a), "United States means a Federal corporation." Plaintiff is a Citizen of the United States not a United States Citizen (14th Amendment federal citizen).

"There is in our Political System, a government of each of the several states and a government of

and as defined in the IR Code. Plaintiff has no contract or business relationship of record with alleged defendant. In fact, the defendant hasn't even rebutted evidence that it filed in its own case that it wasn't even an "agency of the United States Government"**(**[5]**)**, nor address two treasury department orders**(**[6]**)** raising significant questions as to "what" or "whom," exactly, is defendant claiming to be? This clear "case or controversy" should be heard for adjudication of the facts of law where injury in fact is clearly of record. Actions by defendant are without standing law or evidence to substantiate said injury. The mere fact that defendant has remained silent**(**[7]**)** and failed repeatedly to voice any rebuttal to the primary evidence presented with evidence in fact should be significant and persuasive, and certainly points to some alarming

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the United States. Each is distinct from the other and has citizens of its own." — *U.S. v. Cruikshank* 92 US 542, 549, 23 L. Ed 588 1875.

"Both before and after the 14th Amendment to the Federal Constitution it has not been necessary for a person to be a citizen of the U.S. in order to be a citizen of his State" — *Crosse v. Board of Supervisors*, Baltimore, Md., 1966, 221 A. 2d 431 citing U.S. Supreme Court *Slaughter-House* Cases.

[5] *Diversified Metal Products, Inc., v T-Bow Company Trust, Internal Revenue Service and Steve Morgan, 93-405E-EJL*; "4. Denies that the Internal Revenue Service is an agency of the United States Government."

[6] Treasury Order 150-02 & 150-06

[7] *U.S. v. Tweel,* 550 F. 2d. 297, 299, 300 (1977) . (Sec also *U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmine v. Bowen,* 64 A. 932) - "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." *United States v. Bilokumsky v. Tod*, 263 U.S. 149 (1923): "Silence is often evidence of the most persuasive character. See also *Runkle v. Burnham*, 153 U. S. 216, 153 U. S. 225; *Kirby v. Tallmadge*, 160 U. S. 379, 160 U. S. 383."

irregularities, at minimum, in this case.

Plaintiff asks this court to consider... if there are actual income tax laws that plaintiff has violated, as the defendant claims, (versus simply personal belief - *Cheek v. U.S.*, No. 89-658) then why have no criminal charges been brought against plaintiff in the last 14 years? Ample charges of lawfully "owing" an "income" tax, and "not paying" it have been consistently alleged against plaintiff, and assets seized accordingly. Why no jury trial and no media exposure? It is likely very obvious to this court that to do so would bring unwanted attention to the evidence at hand and expose the fraud elements to all America. Will this be continued to be covered up, or finally exposed for what it is?

The uncontested facts of this case stand as follows:

1. Due process of the Supreme Court stare decisis[8] facts presented in evidence in defense was denied in any of the previous courts named.

2. Supreme Court cases have precedent over lower court cases and bind the lower courts and defendant, which was ignored. (See footnote 3.)

3. Proof of alleged debt was NOT provided in any previous court, nor in this court, and the prima facie evidence of the alleged debt itself, (See Appendix A), proves an erroneous assessment on alleged "income," which was never rebutted by defendant. The debt has not been validated and the assessment was never proven to be on plaintiff's wages, salary or compensation for services, or a business profit.

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[8] **Stare decisis:** 'To stand by that which is decided.' The principal that the precedent decisions are to be followed by the courts. To abide or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from . An appeal court's panel is "bound by decisions of prior panels. *United States v. Washington,* 872 F.2d 874,880 (9th Cir. 1989). *(Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 296); "intrinsically sounder doctrine" - *Adarand Constructors, Inc. v Pena*, 515 U.S. 200 (1995).

4. Working as a private American is a right, not a privilege, for any citizen of these united States, and cannot be taxed outside lawful means.

5. "Income" tax is an excise tax, on privilege, and entitled to be treated as such... (*Brushaber v. Union Pac. R.R. Co.,* Infra), and plaintiff has not engaged in any privileged activities that could be lawfully taxed as "income."

Defendant's Motion to Dismiss should be denied for cause. Plaintiff cannot discuss the many misstatements and inaccuracies throughout the Motion to Dismiss, (to preserve judicial economy, if there is such a thing in having to repeat plain English to the defendant) but he clearly does not concede to them.

GENERAL RESPONSE TO DEFENDANT'S STATEMENTS

1. Pg. 1, paragraph 2; Defendant begins the motion with a violation of standing law by attempting to bias the court with unproven and unsubstantiated labels such as "tax defier"**([9])**. He claims his right to challenge any tax which evidence suggests is in error.([10])

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[9] H.R. 2676 (105th): Internal Revenue Service Restructuring and Reform Act of 1998. SEC. 3707. ILLEGAL TAX PROTESTER DESIGNATION. (a) PROHIBITION- The officers and employees of the Internal Revenue Service-- (1) shall not designate taxpayers as illegal tax protesters (**or any similar designation**);

[10] *Gregory v. Helvering*, 293 U.S. 465 (1935): "The legal right of the taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits, cannot be doubted."

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of limitations upon his authority." The United States Supreme Court, *Federal Crop Ins. Corp, v. Merrill*, 332 US 380 388 (1947); "Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation." *Ninth Circuit Court of Appeals, Lavin v Marsh*, 644 f.2D 1378, (1981).

3. Pg. 1, paragraph 2; Defendant goes on to make presumptions... "why he is not liable for federal income taxes..." Plaintiff has repeatedly stated that he believes income taxes are lawful and constitutional, but he denies that he is required by the constitution or standing case precedent or laws to pay taxes he is not "*liable for*."

4. Pg. 1, paragraph 2 - P. 2, last paragraph; Plaintiff denies "the Tenth Circuit affirmed... failure to state a claim" conclusion as being lawful since case precedent evidence was submitted which mitigates such a baseless claim, and the same evidence is herein submitted. (See Appendix C.) In addition, it is very clear that plaintiff has provided, in ALL courts, claims that are clear and unambiguous and provided specified remedies that mitigate any such false claim by defendant. The case should not be dismissed for any alleged failure to state a claim.

5. Pg. 1, paragraph 2; Defendant states... "Plaintiff's attempt to re-hash the same arguments...".

Plaintiff points yet again to the fact that the arguments are being 're-hashed" in the hopes that it will somehow sink in because defendant refuses to rebut this evidence as it has been previously presented, and lower courts have refused the same. Apparently, no such lawful compliance is forthcoming by defendant or the past courts... Why?

"All persons in the United States are chargeable with knowledge of the Statutes at Large... It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority." *Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093, 9th Cir., (1981).

6. Pg. 1, paragraph 2 & Pg. 9, first paragraph; defendant discusses a "tax refund claim."

Plaintiff could not and would not attempt to "met the prerequisites for filing a tax refund suit..." for to do so would have been tacit prima facie admission that he believed he "owed" federal income taxes and was filing to obtain a "refund" of same. The Tax Court suit was not for "refund" of taxes, but on the assessment target, and subsequent levy, and the incorrect income and 16th Amendment issues defendant uses to support the wrongful assessment, therefore plaintiff is not barred from further actions due to no such "tax refund" being initiated.

Defendant is twisting the actual intent of the suit which did not include seeking a "tax refund." Plaintiff cannot request a "tax refund" of something that was never proven to be a tax debt. Calling finances taken from him in the assessment/levy, "taxes owed," doesn't make it a "tax owed" or validate the debt. The levy on plaintiff's assets cannot be named as "taxes owed" until proven to be so. Do we have to keep playing these word games and yet avoiding the evidence?

7. Pg. 2, Background, paragraph 1; Defendant brings up many elements of past cases which have not been raised in this instant case, apparently to further attempt to bias**([11])** this court. Plaintiff hasn't raised those issues and didn't provide evidence for them in this case. The two

[11] "Judges ... rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times." Justice Warren E. Burger Chief Justice, U. S. Supreme Court Source: Christian Science Monitor, 11 February 1987.

statements plaintiff agrees with**([12])**, are... "plaintiff is not a taxpayer" and "wages are not income." The income issue was discussed in the original brief, and is "rehashed" below. The taxpayer issue was discussed in previous cases without rebuttal to the simple question plaintiff asked... "what makes him a taxpayer" as compared to a nontaxpayer?"([13]) "What mechanism of law makes plaintiff automatically a "taxpayer," presumptively labeled as such, and whose definition is being used?

The word "taxpayer" is defined in 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313 as someone who is "*liable for*" and "*subject to*" the income tax in Internal Revenue Code, Subtitle A. Defendant has provided no proof of any "liability"**([14])** for lawful "income" i.e. proving that plaintiff actually has "income" which would make him "*liable for*" said tax. Plaintiff has repeatedly requested said proof without compliance by defendant. Anyone making lawful "income" is naturally

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[12] Plaintiff, in his several years of research and law study, can certainly come to a better understanding of the foundational issues, and does not bring up every point to every statement or claim in previous suits, despite defendant dragging in every scrap of alleged bias they can find.

[13] "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. . ."; *Long v. Rasmussen,* 281 F. 236 (1922). ". . . [P]ersons who are not taxpayers are not within the system and can not benefit by following the procedures prescribed for taxpayers . . ." *Economy Plumbing & Heating v. U.S.,* 470 F2d. 585 (1972). (This case obviously declares there is a difference between the two designations, but no law or evide4nce has been provided to plaintiff by defendant except 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313 which states what makes plaintiff a "taxpayer.")

[14] "The taxpayer must be liable for the tax. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability." *Boathe v. Terry*, 713 F.2d 1405, at 1414 (1983).

"*subject to*" and "*liable for*" paying federal income taxes. Nothing else can do this, despite biasing names such as "taxpayer" or "tax defier."

8. Pg. 2, Background, second paragraph; Defendant states "plaintiff did not provide "[c]lear and concise assignments of each and every error ... in the determination of the deficiency or liability" under Tax Court Rule 34(b), and the facts underlying the assignments of error."

The reason "why" should be self-evident, and defendant's reliance on technicalities to evade answering the facts is significant. Plaintiff *could not* comply with such a task since there was no individual "error" outside the entire assessment itself being based on erroneous and manufactured figures. Plaintiff repeatedly brought this up in his past filings**([15])**, but it was ignored. Plaintiff contends this alleged "deficiency" does not bar this court denying defendant's motion to dismiss and should be set aside since the issue was raised but couldn't be complied with in any relevant formal manner. Is defendant relying on irrelevant formalities to avoid answering the evidence or prove its position?

9. Pg. 2-4; Here, and elsewhere, defendant states lower court findings or orders against plaintiff but in every court named, defendant failed to provide any evidence of record to prove their

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[15] For example - District Court - Amended Brief in Support of Motion to Show Cause, and Amended Motion to Show cause, footnote #8; 1:16-cv-00512-GPG... "Plaintiff does NOT argue alleged 'amount' of alleged Levies, as the entire alleged debt in toto is invalid and under dispute, and NO amount is accepted, and the entire action challenged."

favorite mantra claims of "frivolous," and in every court, due process([16]) was denied . The evidence essential herein was never adjudicated nor were *findings of fact and conclusions of law* provided **([17])** in the named courts as required by law. How can this be clarified any better?

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[16] *Fuentes v. Shevin, Attorney General of Florida, et al,* No. 70-5039, (1972), and *Ray Lien Construction, Inc. v. Jack M. Wainwrite,* 346 So. 2d 1029 (Fla. 1977) condemn involuntary administrative wage and bank account garnishments without a judgment from a court of competent jurisdiction. There are essentials to any case or controversy, whether administrative or judicial, arising under the Constitution and laws of the United States (Article III § 2, U.S. Constitution, "arising under" clause). See *Federal Maritime Commission v. South Carolina Ports Authority*, 535 U.S. (2002), decided March 28, 2002, and decisions cited therein. The following elements are indispensable:

> **1.** When challenged, standing, venue and all elements of subject matter jurisdiction, including compliance with substantive and **procedural due process requirements**, must be established in record; **2.** Facts of the case must be established in record; **3.** Unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination); **4.** The law of the case must affirmatively appear in record, which in the instance of a tax controversy necessarily includes taxing and liability statutes with attending regulations (See *United States of America v. Menk*, 260 F. Supp. 784 at 787 and *United States of America v. Community TV, Inc.*, 327 F.2d 79 (10th Cir., 1964)); **5.** The advocate of a position must prove application of law to stipulated or otherwise provable facts; and **6**. The trial court or decision-maker, whether administrative or judicial, **must render a written decision that includes findings of fact and conclusions of law**. The exception to this requirement is the decision of juries in common law courts. (Emphasis added).

"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 and in fact is a VIOLATION of due process.**" [Black's Law Dictionary, Sixth Edition.] (Emphasis added).

[17] FRCPA Rule 52. Findings and Conclusions by the Court; (a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, **the court must find the facts specially and state its conclusions of law** separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered

10. Pg. 4, paragraph 1; Defendant cites one Supreme Court case filed by plaintiff, but neglects to cite the second case**([18])**, which was much more fine-tuned and concise. It should be noted that a denial of writ of certiorari does not render any opinion as to the merits of the case, however, plaintiff holds that since this is clearly a constitutional issue which involves multiple millions of Americans beyond himself, and the issues were never adjudicated since the Supreme Court's original *stare decisis*, the case was ripe for adjudication by the Supreme Court as the Supreme Court itself has repeatedly stated it would address such issues. Plaintiff contends that the Supreme Court justices likely never even saw either case due to the controversial "cert pool" issue which even Judge Gorsuch refuses to be part of for obvious reasons.**([19])** Plaintiff notices this court that in both of plaintiff's petitions to the Supreme Court, that Judge Gorsuch was,

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under Rule 58. "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978).

[18] Supreme Court Case # 16-8625; **Note**, in this case, and in the previous case, defendant waived the right to respond, which is a failure to respond under Rule 55, which plaintiff noticed the court of, but was denied in both instances.

[19] The cert pool was established in 1973 during the early days of the Burger Court, in order to efficiently review the near 8,000 petitions received each term. In practice, the petitions are apportioned among the Court's law clerks, who then circulate a memo to the justices recommending a grant or denial. The obvious problem here is that this gives the power in these 8000 cases to the law clerks instead of the Justices. It also, in theory, allows 3rd parties to unfairly influence a case through the clerks. (For almost two decades until 2008, only Justice John Paul Stevens, who retired in 2010, stayed out of the pool. He said it had caused "the lessening of the docket." - "You stick your neck out as a clerk when you recommend to grant a case," he told USA Today. "The risk-averse thing to do is to recommend not to take a case." By Adam Liptakmay 1, 2017, NY Times). (Chief Justice Rehnquist chastised clerks for a number of practices, including memos that were tardy, too long, **biased**, left in unsecure locations, or swapped between chambers. (Emphasis added). Source: Peñalver, Eduardo (August 2, 2005). "Roberts' Cert Pool Memos." ThinkProgress. Supreme Court Extra. American Progress Action Fund. Archived from the original on September 14, 2007. Berman, Douglas A. (2005-08-11). "Roberts, the cert pool, and sentencing jurisprudence."

oddly, NOT part of the decision process for either petition which is prima facie evidence he never saw the cases or had a choice to make outside the "cert pool."

11. Pg. 4, paragraph 2; Defendant goes on to state... "Plaintiff has a long history of challenging the IRS's authority to collect taxes" regarding plaintiff's past cases to quash defendant's summons of private records, but this is a distraction away from the facts. Plaintiff does NOT challenge defendant's authority to "collect taxes." The challenge was on defendant's jurisdiction in issuing summons on an unproven, unconstitutional and illegal or fraudulent alleged tax, especially with evidence of record proving no such jurisdiction existed.

12. Defendant goes on to quote... "[p]etitioner has continuously utilized the judicial system (he claims he 'has now been in at least [twelve] courts') to try to avoid paying his underlying tax liabilities even though the courts have repeatedly concluded that his claims are without merit."

Defendant's presumptive statement is defective for three reasons: 1. There is zero evidence in the record that plaintiff has been using judicial economy to avoid paying a lawful, constitutional and valid tax. Hearsay and presumption are no evidence at all, and "may not be given weight as evidence."**([20])** 2. This presumes a "tax liability" elsewhere addressed, which is not of record nor

[20] "The power to create [false] presumptions is not a means of escape from constitutional restrictions" *Heiner v. Donnan* 285, US 312 (1932) and *New York Times v. Sullivan* 376 US 254 (1964); "This court has never treated a presumption as any form of evidence." See, e.g., *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) "[A] presumption is not evidence."); see also.: *Del Vecchio v. Bowers*, 296 U.S. 280, 286, 56 S.Ct.

proven under 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313. 3. In no previous court has plaintiff been "sanctioned" (as countless Americans have been) for allegedly bringing up evidence which has been allegedly proven to be frivolous and for which plaintiff could be held liable. This has never occurred and is prima facie evidence that plaintiff is correct and defendant does not want to provide yet more evidence of fraud against plaintiff or millions of Americans, and create further liability, by attempting to do so.

A. JURISDICTION CHALLENGED BY DEFENDANT, AND ANSWERED

12. Pg. 5, Argument, #1; PLAINTIFF'S COMPLAINT FAILS TO CONFER JURISDICTION ON THIS COURT.

Defendant states... "The U.S. Court of Federal Claims derives its jurisdiction from the Tucker Act" but plaintiff takes exception to this limited claim. There are other laws in effect if the Tucker Act is deficient for any lawful reason, and which appear to contradict Tucker. First, the Tucker Act states...

> Tucker Act: 28 U.S. Code § 1491; (a) (1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department...

Nowhere in this act does it address taxes. In addition, this case certainly involves both the "Constitution" and an "Act of Congress," and of course, "any regulation of an executive (IRS) department." Certainly unconstitutional direct taxation and unauthorized and unsubstantiated

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190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence..."); see also *New York Life Ins. Co. v. Gamer*, (1938).

taxation of wages under unproven assertions fall within this purview.

13. P. 6, paragraph 2 and 3; The "requirements" as stated have been addressed elsewhere above. They CANNOT be complied with without providing evidence of acquiescence to the alleged assessment being a "federal tax." The defendant repeatedly proved they would not listen to or answer plaintiff's evidence and challenges, so the process was certainly a waste of time and a waiving of his right to due process of law in the courts. Merely the requirement to "satisfy the full payment rule" by paying the alleged debt would be an impossibility which few Americans could ever do. To suggest such a thing is unreasonable and unconscionable. In addition to that, Publication 1660 (Rev. 2-2014) Catalog Number 14376Z Department of the Treasury states clearly that...

> "CAP generally results in a quicker Appeals decision and is available for a broader range of collection actions. However, you cannot go to court if you disagree with the CAP decision."

This obviously prevented plaintiff from proceeding under this process because it would have barred his forward movement to obtain remedy in the courts as the defendant previously clearly stated would be the place to challenge the issues (but which has yet to occur). Plaintiff repeatedly challenged the assessment via notices to defendant's agents (evidence available) but was never provided even one required hearing despite repeated notices of this deficiency by defendant. Defendant cannot prove said hearing was provided to plaintiff to defend himself.

14. Pg. 5, footnote #3; Defendant argues against the damages case of *Pacific Mut. Life Ins. Co.*

v. *Haslip,* 499 U.S. 1, 19 (1991), stating that it is "not a tax refund case."

Plaintiff points out the fact that it is a "fraud" case. Surely the precedent set in *Pacific* for a for-profit corporation involved with fraud must be minimally adequate for public servant agencies hired by the People to tend to their affairs in a lawful, constitutional, moral and ethical manner. There must be a precedent set for compensatory damages despite the government protecting itself from "punitive" damages through self-serving statutes, due to what appears to be a willful, premeditated intent to break the laws with impunity. Is there no mechanism for deterrence against such blatant activities, to at least minimize recidivism?

15. Pg. 7; Defendant goes on to challenge jurisdiction once again quoting 6512(a) regarding tax court. IRC 6512(a) states in part...

> (A) "...no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court... (2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final..."

Defendants go on to state there are "exceptions" to this, and "none of which are applicable here" but this is not true. Defendant has claimed that the Tax Court rulings are "final" and debt is due (the levies are prima facie evidence of this) which bring the exception into view. Jurisdiction under 6512 stands and this case should not be dismissed on those grounds.

Defendants continuing dialog regarding the alleged "income tax" and the Tax Court jurisdiction is moot, and should not need any rebuttal of stated cases such as *Smith* v. *United States, etc.*

Plaintiff has proven, and the record confirms, that the Tax Court failed to provide *due process of law* or mandatory *findings of fact* on the relevant issues. These were ignored, which is a fraud upon the court,**([21])**, making the previous Tax Court's rulings, and other involved court's rulings essentially void**([22]),** ab initio. Can this be ignored and cast aside by defendant?

16. Pg. 9, C. Defendant states... "In any event, the Court does not have jurisdiction over plaintiffs wrongful levy and takings claims.." and, **on Pg. 10. D; "Moreover, the Court does not have jurisdiction over plaintiff's claims for declaratory and injunctive relief.**

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

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." (Emphasis added.)

[22] "It is also clear and well-settled Illinois law that any attempt to commit 'fraud upon the court' vitiates the entire proceeding." *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229. (1934). ("The maxim that fraud vitiates every transaction into which it enters applies to judgments..."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929). ("...fraud vitiates every transaction into which it enters ..."); In re *Village of Willowbrook*, 37 Ill.App.2d 393 (1962). "It is axiomatic that fraud vitiates everything." *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896). 37 Am Jur 2d, Section 8, states, "Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments."

Cited cases can be voided at any time since there is no statute of limitations on fraud.

Jurisdiction is again brought up, claiming the jurisdiction of this court is removed due to "tort" claims by plaintiff, primarily "wrongful levy and taking claims." Is defendant claiming there is no recourse against the defendant for redress of grievance and being heard under *due process of law*? If plaintiff has never received *due process of law* in any of the past courts, and was twice not heard in the U.S. Supreme Court, is defendant stating there is no recourse in ANY other court to address the issues? Plaintiff points this court to other laws to support this court's jurisdiction**([23])** on the issues.

> a) The Administrative Procedure Act ("APA") waives sovereign immunity in limited circumstances, and to invoke the APA's waiver, a plaintiff bears the burden of establishing that 1) the challenged governmental conduct is "final agency action" within the meaning of the APA; 2) "there is no other adequate remedy in a court;" and 3) the alleged agency action is not committed to agency discretion by law., 5 U.S.C. §§ 551, 701(a)(2), 702, 704. See also 47 U.S.C. § 202(b)(6) (FCC); 15 U.S.C. § 77i(a) (SEC) 16 U.S.C. § 825a(b) (FPC). The Administrative Procedure Act provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

Surely the record proves the above criteria... that there has been a "final agency action," (Assessment and levy), that "there is no other remedy in court," and that the "action is not committed to agency discretion." The APA waiver should be invoked.

Further...

> b) U.S.C. § 1346 (a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: 1) Any civil action against the United States for the **recovery of any internal-revenue tax alleged to have been erroneously**

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[23] "The jurisdiction of the [United States Court of Federal Claims] is limited to suits against the United States." *McGrath v. United States*, 85 Fed. Cl. 769, 772 (2009) (citing *United States v. Sherwood*, 312 U.S. 584, 588 (1941)); 1998)). "In deciding whether there is subject-matter jurisdiction, 'the allegations stated in the complaint are taken as true and jurisdiction is decided on the face of the pleadings.'" *Folden*, 379 F.3d at 1354 (quoting *Shearin v. United States*, 992 F.2d 1195, 1195-96 (Fed. Cir. 1993)).

> **or illegally assessed or collected**, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

Since the district courts failed to adjudicate the evidence, this falls to this honorable court to do so. Continuing...

> c) Office of the U.S. Attorneys, Civil Resource Manual - 47. Court Of Federal Claims Litigation: The United States Court of Federal Claims has jurisdiction over a wide range of claims against the government including, but not limited to, contract disputes, bid protests, **takings claims**, **tax refund suits**, patent and copyright matters, Indian claims, civilian and military pay cases, and vaccine cases. **When more than $10,000 is claimed, the Court of Federal Claims possesses exclusive jurisdiction** in these cases pursuant to the Tucker Act. 28 U.S.C. § 1491. 28 U.S. Code § 1346. (Emphasis added.) (Also see *Jan's Helicopter Service v. FAA*, 525 F.3d 1299, 1304 (Fed. Cir. 2008).

Do we have a conflict in statutes here? Defendant claims the levies of plaintiff's assets were "for taxes due" the United States. The nearly $300,000 assessed against plaintiff is tantamount to the levy of all assets plaintiff has for life, which will far exceed the $10,000, and the actual assets already taken exceed the $10,000 limit. This issue alone, regardless of the cause, criminal or civil tort, errors, etc., stands on its own merits.

Plaintiff contends that if the court lacks jurisdiction over the tort or criminal elements of this case, and cannot provide even a modicum of justice on those controversies because of that, and since plaintiff, and all Americans, have never had fair and just adjudication of this evidence, the court can transfer**([24])** all elements of this case to a court that has jurisdiction for proper due

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[24] "Should the court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required either to dismiss the action **as a matter of law OR... to transfer it to another federal court that would have jurisdiction**." *Travelers Indem. Co. v. United States,* 72 Fed. Cl. 56, 59-60 (2006). (Emphasis added).

process of law on these issues. However, plaintiff contends this court most certainly has jurisdiction at least over the administrative assessment amount itself, if not on the tort or other criminal allegations surrounding the income and 16th Amendment issues, which will be addressed elsewhere if not transferred.

It must be noted that defendant's footnote #8 on P. 9 of Motion to Dismiss regarding the Grand Jury is not factual and easily rebutted. In *United States v. R. Enterprises*, the court stated:

> "Unlike a court, whose jurisdiction is predicated upon a specific case or controversy, **the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not**.'" *United States v. R. Enterprises*, 498 U.S. 111 S.Ct. 722, 726, 112 L.Ed.2d 795 (1991) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643, 70 S.Ct. 357, 364, 94 L.Ed. 401 (1950))." (Emphasis added.)

No specific "criminal" complaint must be made to invoke the Grand Jury powers. The evidence

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It certainly is "in the interest of justice" to transfer plaintiff's complaint to another court of the United States under 28 U.S.C. § 1631. See *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1374-75 (Fed. Cir. 2005). To dismiss these issues outright would not serve justice, the rule of law, or the American people.

If this applies: 28 U.S.C. 1404(a) - Change of Venue: 28 U.S.C. 1406(a) - Cure of Defective Venue.

Of course, every other previous court should have, sua sponte, transferred these issues if they lacked jurisdiction to rule on them, as they failed to do. Plaintiff has pleaded in the past that the U.S. Supreme Court, under original jurisdiction, should be the court to properly adjudicate these issues. The transfer of this unadjudicated "case or controversy" to the Supreme (or other competent) Court, from this honorable court, should surely provide it with a persuasive recommendation to finally adjudicate what has been regularly denied for years in lower courts.

Plaintiff has been deprived of a jury trial (7th Amendment), has been denied his request for assistance of counsel, couldn't obtain any willing counsel, (and if he had, wouldn't have been able to afford it) and denied due process of law under the 5th Amendment.

herein and in many other cases is very probative. Plaintiff has included to this court a Motion for Summons of Grand Jury & Memorandum of Law documentation on these issues.

18. Pg. 11; first and second paragraphs; Defendant states... "'The court . .. does not have jurisdiction to issue [a] declaratory judgment, where such relief is the primary focus of the suit.' *Thorndike* v. *United States,* 72 Fed . CI. 580, 583 (2006)."

Defendant goes on to state... **"Where, as here, plaintiff asserts an independent claim for injunctive relief that is not tied to and subordinate to a money judgment, the Court does not have jurisdiction over plaintiff's claims."**

This is not in evidence and plaintiff denies this claim. It must be obvious that the entire main purpose of the suit is to point out the levy of his assets due to ("***tied to***") an undocumented and unproven debt based on ("***tied to***") an assessment of wages as alleged "income" taxes, and providing the underlying facts in support of this regarding the nature of "income" and the claimed authority to tax said "income" via the 16th Amendment. The facts in any mention of elements related to "declaratory judgment" or "injunctive relief" do not mitigate or lessen the primary goal of this entire process... that of stopping the levy of all plaintiff's assets based on an assessment of something which is provably NOT lawful income.

Certainly the issues of "income" and the "16th Amendment" are clearly "***tied to***" the issue of an erroneous assessment, and cannot be dismissed as casually as defendant does so. Plaintiff

reserves his right to have that data provided by the defendant**([25])** as a basis to determine the validity of the assessment. Plaintiff points the court to his second complaint in his original brief**([26])** providing prima facie unrebutted evidence the assessment was incorrect despite any relevance of the definition of "income" claims OR the relevance of the 16th Amendment claims. (Both directly answered below).

19. Pg. 11, II A. Defendants states... " Alternatively, plaintiffs complaint is barred by the doctrine of *res judicata...*"

Defendant states...

> **"[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action."**

And, **Pg. 12, first paragraph;** Defendant states...

> **"...the claims underlying plaintiffs Court of Federal Claims complaint are based on the same facts litigated in the Tax Court action-plaintiffs tax liabilities for tax years 2003 through 2006."**

Plaintiff denies this position as well, as it is patently false. As has already been proven in the record, and prima facie evidence exists in all past court filings, there was no adjudication of the three relevant supporting facts raised previously, which are... the validity of the assessment itself, the definition of "income," and the law that allegedly authorizes a tax on wages, salary or

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[25] Plaintiff not only challenged defendant to produce the records used for assessment, but he also long ago requested copies of all such records from his primary business with PayPal and it was not provided, however, the assessment figures themselves are prima facie evidence of defendant having said records and defendant should be ordered to provide them for this issue.

[26] See Addendum A attached

compensation for services. Defendant cannot provide one past case where the issues of the definition of "income" was adjudicated, where the Supreme Court case precedent was adjudicated, where proof of the definition of "income" is in the record, and where the alleged "income" records that were assessed was entered into the evidence. Defendant fails completely on this position using past cases as evidence of adjudication of evidence, and the court records prove it.

20. Lastly on the Jurisdiction issue, 23. P. 8, last paragraph; Defendant quotes : § 7422(e);

> (e) Stay of proceedings.--If the Secretary prior to the hearing of a suit brought by a taxpayer in ... the United States Court of Federal Claims. . . mails to the taxpayer a notice that a deficiency has been determined .. . [for the same tax year], the proceedings in taxpayer's suit shall be stayed . .. If the taxpayer files a petition with the Tax Court ... the United States Court of Federal Claims ... shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court.

Of course, defendant, again, neglects to quote relevant parts of the section. The full quote is:

> (e) Stay of proceedings. If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Court of Federal **Claims for the recovery of any income tax**, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the **tax which is the subject matter of taxpayer's suit**, the proceedings in taxpayer's suit shall be **stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter**. If the taxpayer files a petition with the Tax Court, the district court or the United States Court of Federal Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court **of the subject matter of taxpayer's suit for refund**.

This complete quote states that such loss of jurisdiction by the United States Court of Federal Claims is subject to the "subsequent" filing of suit in the Tax Court. Plaintiff's filing with the Tax Court was long PRIOR to this suit in this court. The Tax Court presently has no jurisdiction

over this case, thus the United States Court of Federal Claims maintains jurisdiction.

Additionally, the relevant issues of 7442(e) (bolded and underlined) also preclude Tax Court related issues at this time. Plaintiff's suit in said court was NOT for recovery of "income" taxes, despite the court having jurisdiction to adjudicate the relevant issues, but never performed its judicial duty. The issue was in regard to the jurisdiction of the defendant to be taxing plaintiff on something that was not income, thus it was clearly NOT an "income" tax and assessment must be based on some other form of tax liability, as yet proven.

INCOME DEFINED

21. Pg. 12, B; Defendant states... "In addition, wages, salaries and compensation are income subject to tax."

Lower court cases do not supercede Supreme Court precedent. If the IR Code itself doesn't define "income," this leaves the issue embroiled in the "*void for vagueness*" doctrine**([27])**, unless it IS defined somewhere. The defendant cannot claim a definition for "income" that is not in the record of these lower courts, the IR Code, or elsewhere, in supporting its claims. Defendant's definition and other claims become merely a *Fiction of Law*.([28]) The cases defendant and the

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[27] "A law is void for vagueness if persons `of common intelligence must necessarily guess at its meaning and differ as to its application . . . .' *Smith v. Goguen*, 415 U.S. 566, 572 n. 8, quoting *Connally v. General Construction Co*., 269 U.S. 385, 391.

[28] FICTION OF LAW. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption, for purposes of justice, of a fact that does not or may not exist. *Ryan v. Motor Credit Co*., 30 N.J.Eq. 531, 23 A.2d 607, 621. Blacks Law Dictionary, 6th Edition.

previous lower courts all ignore follows. The question that needs to be addressed is "who exactly has the 'frivolous'([29]) responses in claims and answers given?" An honest and ethical reading of the following cases proves plaintiff's position on some of the evidence supporting the assessment error. Many more cases are available;

> *Merchants Loan* & *Trust Co. v. Smietanka,* 225 U.S. 509, 518, 519. (1923); "Income, as defined by the Supreme Court means, 'gains and profits' as a result of corporate activity and 'profit gained through the sale or conversion of capital assets.'" [Also see *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)] .
>
> "...income; 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.'" *S. Pacific v. Lowe*, 247 F. 330. (1918).

How do "gains" and "profits" in any way "limit the meaning of the word 'income'" if they allegedly are the same thing?

> *Sims vs. Ahrens,* 167 Ark. 557; 271 S.W. 720, 730, 733 (1925); "The legislature has no power to declare as a privilege and tax for revenue purposes, occupations that are of common right ...**Thousands of individuals in this State carry on their occupations as above defined who derive no income whatever therefrom**." (Emphasis added).

How can the *Sims,* supra, cite be true if wages are defined as "income?" Were the people working for free back then, and not receiving wages for their labor?

> **1913 Congressional Record, P. 3843, 3844; Senator Albert B. Cummins;** "The word 'income' has a **well defined meaning before the amendment** of the Constitution was adopted. **It has been defined in all of the courts of this country** . . . If we could call anything that we pleased income, we could obliterate all the distinction between income

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[29] Frivolous; "An answer or plea is called 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff." *Ervin v. Lowery*, 64 N. C. 321; *Strong v. Sproul*, 53 N. Y. 499; Black's Law Dictionary, 6th Edition. A frivolous demurrer has been defined to lie in one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research." *Cottrill v. Cramer*, 40 Wis. 558.

> and principal. The Congress can not affect the meaning of the word 'income' by any legislation whatsoever." (Emphasis added).

This proves "income" was already properly defined and known prior to the 1913, 16th Amendment. This begs the question... if the courts makes plain there is a "distinction" between "income and principal," and "gains" and "profits" in some way "limit the meaning of the word 'income,'" defendant's claims fall apart regarding plaintiff's or any private American's wages. How can defendant claim wages are "income" (i.e. gain or profit) as compared to "principal" received for exchange of labor? Are there any related costs to plaintiff and all other Americans in producing labor or service for a wage, or is it all obtained free and makes all wages pure "gain" or "profit" with no "costs" to produce such?

> *Black's Law Dictionary,* 2nd Edition, "Income Tax: 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, 30 S.W. 973 . 28 L.R.A. 480; *Parker Insurance Co.,* 42 La . Ann 428, 7 South. 599." (Emphasis added).

"Trades" has a specific IR Code definition which does NOT include most working Americans. (More word-smithing([30]) at work)... Proof can be provided if necessary. In none of the above cases are wages included in the definition of "income." The most persuasive Supreme Court cases on these two issues follow:

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[30] "Word-smithing" is the legal language ploy of writing statutes whereby word with normally understood meanings do not carry the same meaning over to statutes, and ONLY statutes can define specific words they use. See *Knox v. United States*, Case No. SA-89-ca-1308, United States District Court for The Western District of Texas; "As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey: the enlightened patriots who framed our constitution and the people who adopted it must be understood to have employed the words in their natural sense, and to have intended what they have said." [*Gibbons v. Ogden*, 27 U.S. 1]. This is NOT so in today's IR Code.

U.S. v. Balard, 535, 575 F. 2D 400 (1976); (see also *Oliver v. Halstead,* 196 VA 992; 86 S.E. Rep. 2D 858); "The general term 'income' is not defined in the Internal Revenue Code . . . 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** (16th Amendment) 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 . . ."

Lucas v. Earl, 281 U.S. 111 (1930); "**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 one that **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 an entirety and not be returned by the individual performing the services... **It is to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income derived from salaries, wages, or compensation for personal services**. Since it is not the salary, the wage or the compensation that is to be included, but only the gain, profit or income that may be **derived therefrom**, **it would seem plain** that salaries, wages or compensation for personal services are not to be taxed as an entirety... Since, also, it is gain, profit or income to the individual that is to be taxed, **it would seem plain** that **it is only the amount of such salaries, wages or compensation as is gain, profit or income to the individual**..." (Emphasis added).

Edwards v. Keith, 231 F. 110 (2nd Cir . 1916); "The statute and the statute alone determines what is income to be taxed. It taxes only income 'derived' from many different sources; one does not 'derive income' by rendering services and charging for them."

Pollock v. Farmers' Loan & Trust co., 158 U.S . 60 1, 635-637 (1895): "...and in that way what was intended as a tax on capital (profit-gain derived from capital) would remain in substance as a tax on occupations and labor. **We cannot believe that such was the intention of Congress**." (Emphasis added.)

Gov. A.E. Wilson on the Income Tax (16) Amendment, *New York Times,* Part 5, P. 13, February 26, 1911; "The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system."

> *Taft v. Bowers,* NY 1929, 49 S.Ct. 199,278 U.S. 470, 73 L.Ed. 460 "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."

"Labor" being the labor provided by hired employees which produces the eventual "gain or profit" for the company or business... this is a "corporate" (privilege) profit tax issue, not a tax on employee's labor or wages. Plaintiff provided conclusive evidence of the element of "derived from" in previous cases, and points this court to Addendum B for clarification on this subject.

22. Pg. 13, first main paragraph; Defendant states that ... "...the Code defines taxable income as 'all income from whatever source derived,'" and this 'specifically includes compensation for services, I.R.C. § 61(a)(1), and business income, LR.C. § 61(a)(2).'"

The court may be realizing how deep the obfuscation rabbit hole goes by now... First, this code does not define "taxable income." Second, the term "all income" does not define "income." Third, it states... "compensation for services" but "to whom" is this compensation being paid to? Plaintiff will not address the third element but the *word-smithing* taking place within the IR Code for decades to confuse Americans, and the courts themselves, is another element for the Grand Jury, but should be persuasive here.

23. Pg. 13, second paragraph; Defendant states... "... and to bring within the definition of income any "accessio[n] to wealth," citing *(Commissioner v. Glenshaw Glass Co.,* 348 U.S.

426 , 431 (1955)).

This is not relevant since working for wages to survive has nothing to do with any kind of effort toward the "accession to wealth." If defendant claims the *Commissioner* case says "wages are income" and are an "accession to wealth," then we have a clear conflict within that court's rulings. The *Commissioner* case is a 1955 case and cannot negate or overturn other previous standing court cases. As has been repeatedly argued, wages are an exchange**([31])** of work for a wage, and does not create the "accessio[n] to wealth" (gains or profit from privileged activities or from "unearned wealth"**([32])**) that congress was aiming at.

"Productive property" does NOT include wages in and of themselves unless anything left of wages is utilized as savings (principal) "from which" income can be "derived."**([33])** The "invested" wage/principal cannot be taxed directly.

DEFENDANT'S 16th AMENDMENT ARGUMENT FAILURE

24. Now, regarding the alleged 16th Amendment bringing wages into the category of "income" (a

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[31] "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." *Coppage v. Kansas*, 236 U.S. 1, at 14, 23, 24 (1915).

[32] 45 Congressional Record, 4420 (1909): "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.' "

[33] *Slaughter House,* 83 U.S. 36, at 127 (1873) P. 11 "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." Gains and profits... which ARE an "accessio[n] to wealth." (Emphasis added.)

tax on labor - a “new” tax) which can be directly taxed... the following court case law should suffice; (Emphasis added throughout).

> *Brushaber v. Union Pac. R.R. Co.,* 240 U.S . 1, 11, 12, 18 (1916); "We are of opinion, however, that **the confusion** is not inherent, but rather **arises from the conclusion that the 16th Amendment provides for a hitherto 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, (*i.e. if the presumption that the 16th Amendment created an unknown power of an income tax being directly applied to wages which defendant contends is the law - Plaintiff*), **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 intended**, 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."

Peck & *Co. v. Lowe,* 247 U.S. 165 (1917), Brief for the Appellant at 11, 14'15 P. 8, 9, 16 "The Sixteenth Amendment to the Constitution has not enlarged the taxing power of Congress or affected the prohibition against its burdening exports. 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 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**." (Emphasis added.).

Conner v. United States, 303 F. Supp. 1187 (1969) P. 1191: 47 C.J.S. "Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. **This was true when the 16th amendment became effective**, it was true at the time of the decision in *Eisner v. Macomber,* it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. **If there is no gain, there is no income**. 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."

Alabama was the first State in the Union to ratify the 16th Amendment. According to the August 3, 1909 edition of the New York Times , a Col. Bulger introduced the 16th Amendment in the Alabama House. Said the Times... “The only interruption to his speech was a query by Representative J. T. Glover of Birmingham, who wanted to know if the amendment would affect salaries. Col. Sam Will John, also of Birmingham, responded that it would not.”

These cases clearly declare the 16th Amendment did NOT create a new tax, and that “income” is a corporate profit or *gain derived from* some principal source, including wages, but “income” does not include wages themselves. In examining the history of the debate and ratification of the 16th Amendment, there is no evidence upon which the defendant can rely on for their claim that

the American People desired to have their wages and salaries taxed. No evidence can be found in the law journals or courts of the time, not in the journals on political economy or economics, not in the Congressional Record nor other Congressional documents, nor in any of the newspapers of record of the time. In fact, just the opposite is true. In other words, the government's position that wages and salaries equals income within the meaning of the 16th Amendment is wholly without foundation.

25. Continuing on this topic, Pg. 13, C: defendant quotes...

> "The Federal Circuit and other courts have held that '[t]o the extent that the ... [plaintiff] believe[s] that the United States is without constitutional authorization to tax their income, we need only point to the plain language of the Sixteenth Amendment: 'Congress shall have the power to lay and collect taxes on incomes, from whatever source derived...'" *Bibbs* v. *United States,* 230 F.3d 1378 (Fed. Cir. 2000) . Plaintiffs constitutional argument therefore fails."

Plaintiff points out the obvious deficiency in the above statements; First, plaintiff has never stated "the United States is without constitutional authorization to tax... income..." Plaintiff states clearly, once again, that the United States IS without authority to tax as income that which is NOT income. The defendant can tax lawful income as Congress and the Supreme Court have clearly stated, but presumptions and hearsay about what "income" is cannot be evidence (Footnote 19) in this case, regardless of any inferior court's judgments to the contrary. Second, plaintiff agrees that... "Congress shall have the power to lay and collect taxes on incomes, from whatever source derived," however, this is more presumption as to what "income" is defined as within this quote, and what "derived" actually and lawfully means, as discussed in *Addendum B*.

26. Lastly on this topic, Pg. 14 D; Defendant states... " The IRS has authority to tax income under the Sixteenth Amendment," and **P. 14 D... "plaintiff argues that the IRS does not have authority to tax income under the Sixteenth Amendment."**

Plaintiff disagrees with this presumption. The 16th Amendment did not "institute" the income tax, or any "authority" to suddenly tax income, as the Supreme Court clearly stated above. The 16th Amendment merely clarified problems with a ruling of the *Pollock* court, supra, but it did not institute the "income" tax as evidence of record proves. There is nothing in law or the amendment which authorizes a tax on wages of plaintiff or private Americans in this union...

> Stratton's Independence, Ltd. v. Howbert, 231 US 399, 414 (1913). "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 ("net" - plaintiff) income of the corporation . . . [Additional cites omitted.]" (Emphasis added).
>
> *Flint V Stone Tracy*, 220 US 107, 151 - 152 (1911): "Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."

The 1894 "income tax law" predates the 1913, 16th Amendment (and tax laws go back as far as 1863) and proves "income" was already being taxed, and defined exactly what it was... "an excise tax [indirect] upon the conduct of business in a corporate capacity." (*Stratton's*, supra). The 16th Amendment did not change the authority for the defendant to tax income. It changed the presumptions made regarding what "source" could or could not be addressed in taxing income, and it never specified wages of private Americans, and no law has been provided to

prove such. Any ambiguity of laws or actions should be in plaintiff's favor.**([34])**

DEFENDANT'S LEVY AUTHORITY REBUTTED

27. Pg. 13, C: Defendant states... " The IRS had authority to levy plaintiffs assets."

Defendant states select portions of 6331, but is misleading this court with misapplied code section as if it applies to plaintiff. The entirety of this section reads as follows:

> 26 U.S. Code § 6331 - Levy and distraint - a) Authority of Secretary
>
> "If any person **liable** to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.** (Emphasis added.)

Of course, plaintiff has never been such an "officer, employee, or elected official" except for his Navy service time decades ago, so this section has no bearing on plaintiff. Even if it did apply, (and it doesn't), plaintiff has repeatedly made crystal clear the fact that the argument is NOT about the "levy of his assets" for alleged taxes owed, but on the assets upon which the original "income" tax assessment was based. (See Addendum A). The assessment against plaintiff was upon assets which were NOT wages, salary or compensation for services, or business profits of

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[34] *Gould v. Gould,* 245 U.S. 151 -""In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government and in favor of the citizen." *Hassett v. Welch.,* 303 US 303, 82 L Ed 858. (1938)- "[I]f doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer . . .".

any kind. The assessment WAS upon all that was counted as a deposit into the account, (mostly customer's payments for products), and neglected to exclude all expenses that went OUT from this account, (product costs, business expenses, etc., usually approximately 95% of all in the account) thus creating the alleged "liability" which actually didn't exist in law.

Additionally, the business assets levied for the alleged "tax liability" also included these same customer payments for products they had not yet received products for... thus bringing into the levy issue the fact that rightful third party assets were being taken to attempt to fulfill the erroneous levy against plaintiff.

Three relevant levy actions at issue are the following:

A. Defendant has attempted to levy all plaintiff's Veteran's Disability Compensation in the past, claiming such levy is authorized. However, in *Porter,* infra**([35])**, it makes clear that any party is prohibited from levy of Plaintiff's Veterans Disability compensation "before or after" receipt. Defendant is still in Federal District Court in Colorado with this remanded issue, (16-cv-00512-PAB-MJW) and it is yet to be adjudicated despite a "Motion for Status of Case" filed on October 26, 2017.

In addition, standing code prohibits such levy...

> **26 U.S. Code § 6334 - Property exempt from levy**; (10) Certain service-connected disability payments. Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—(A) subchapter II, III, IV, V,,[1] or VI of chapter 11 of such title 38, or

[35] "We agree with the District Court that the funds involved here are exempt under the statute; therefore we reverse the judgment below... , that such payments shall be exempt 'either before or after receipt by the beneficiary." *Porter v. Aetna Cas. & Sur. Co*., 370 U.S. 159 (1962)

(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

Plaintiff clearly falls within this protected class as a disabled Navy veteran with service-connected disabilities, and this has never been denied by defendant.

B) Defendant has been levying plaintiff's entire $697**([36])** monthly Social Security retirement payment since February, 2016, totaling $16,031 as of December 1, 2017. Besides the levy being based on unproven or substantiated assessment of lawful "income," such a levy "is prohibited under Title 42 Ch. 7, Social Security, Subchapter II - Federal Old-age, Survivors, and Disability Insurance Benefits, § 407**([37])**. To further cloud the issue, defendant claims the levy is based on Section 6334(c) of the Internal Revenue Code. This code does NOT provide for the levy of **all** Social Security funds. Such general, and unspecific levy on Social Security funds, if authorized in conflict with Title 42, is modified by Section 1024 of the Taxpayer Relief Act of 1997 (Public Law 105-34) which clearly states that "up to 15 percent of each monthly payment" can be levied of Social Security funds, of course, for valid and proven tax liabilities. Where is the clear, unambiguous law defendant is claiming as authority in all this?

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[36] SS to rise to $713 as of January, and which the Social Security administration has already noticed plaintiff of the taking of all of this as well for defendant.

[37] Title 42, Ch. 7, Social Security, Subchapter II - Federal Old-age, Survivors, and Disability Insurance Benefits, § 407 - Assignment of benefits; (a) In general - "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

C) Defendant levied plaintiff's business account in the past, until suit was brought, and this threat still exists according to defendant's position on the issues. These assets were discussed above, and are NOT "income" or "business profits." The unlawful levies have created untold misery and hardship on the plaintiff as a disabled veteran, exacerbated his disabilities, and forced his standard of living much further below the poverty level than was already extant.

CONCLUSION

Plaintiff moves this court to deny defendant's motion to dismiss and moves this court to Order defendant, (writ of mandamus under the All Writs Act, 28 U.S.C. 1651(a)) as jurisdiction allows, to:

1. Answer Supreme Court case law on the relevant issues of "income" and the 16th Amendment
2. Answer laws preventing the taking all of plaintiff's social security and disability assets.
3. Provide proof of debt documents used to create assessment against plaintiff.
4. Come to just and proper compensatory and all other lawful, just and right damages**(38)** against defendant as provided in the original brief.
5. Summons one or more Grand Juries to investigate the clear evidence of criminal activities by factions within the U.S. government. (See Motion attached herein.)
6. OR, for this court to transfer (footnote #25) the issues that cannot be adjudicated

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[38] Federal Rules of Civil Procedure, 28 USCA, Rule 54c, demand for judgment: "Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." *U.S. v. White County Bridge Commission* (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

herein, to the proper court for complete adjudication and due process of law.

What is the truth**([39])**, the U.S. Constitution, and the rule of law worth to the courts and servant government, and all Americans being deprived of assets under *color of law*? What is defending the Constitution and original intent of Congress and the courts worth? What are trillions of dollars being extracted from most American's wages worth to remedy? What is 14 years of plaintiff's life forced into 10,000 hours of work in research, document preparations, mailings, court cases, travel, etc.? What does 14 years of defendant's mental, emotional, psychological stress worth, not to mention exacerbation of physical disabilities? How do you put a value on that and how do you put a value on deterring this type of action, or setting a precedent for others in our servant government to be warned?**([40])** How do you valuate that? Zero? $100,000, $10

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[39] Isaiah 59:4 & :14 - :15

[40] "Research to date generally indicates that increases in the *certainty* of punishment... are more likely to produce deterrent benefits... punishment may be expected to affect deterrence in one of two ways. First, by increasing the certainty of punishment, potential offenders may be deterred by the risk of apprehension. Second, the severity of punishment may influence behavior if potential offenders weigh the consequences of their actions and conclude that the risks of punishment are too severe." *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment*. Valerie Wright, Ph.D. November 2010. "...the Eighth Amendment directs judges to exercise their wise judgment in assessing the proportionality of all forms of punishment... The Solicitor General has urged us to consider... the 'frequency' of the crime's commission, the 'ease or difficulty of detection,' and 'the degree to which the crime may be deterred by differing amounts of punishment.' Brief for United States as Amicus Curiae 24-25." *Ewing V. California*, (2003) No. 01-6978. "... the evidence in support of certainty's effect pertains almost exclusively to apprehension probability. Consequently, the more precise statement is that certainty of apprehension, not the severity of the ensuing legal consequence, is the more effective deterrent." Deterrence in the Twenty-First Century Daniel S. Nagin; "That said, the purposes and functions attributed to punishment seem to cover general prevention or deterrence (the punishment serving to dissuade society´s members from committing offences), specific prevention (**the punishment aimed at deterring the convicted person from recidivism**), ..." *The Procecutor vs. Drazen Erdemovic*, Sentencing Judgement, Case No. IT -96 - 22 - T (29

million, $100 million, $500 million, One Billion? What does it take to get the message across to a defendant that has repeatedly been warned by the courts and yet continues to act in the same manner against Americans and their families?

All America is depending on The United States Court of Federal Claims, being the "People's Court" and "Keeper of the Nation's Conscience," to fight for the truth on these issues and, once and for all, assure complete adjudication[41] of all evidence of record, whether in this court, or through a court that will comply with standing laws on due process, or through a Grand Jury's investigation and indictment of guilty parties.

Respectfully and Prayerfully Submitted,

_____

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Signed December _____, 2017

November 1996), para. 60). (Emphasis added.) What level of deterrence will help prevent this sort of behavior against millions of Americans in the future?

[41] "Judges ... rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times." Justice Warren E. Burger, Chief Justice, U. S. Supreme Court. Source: Christian Science Monitor, 11 February 1987.