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MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Case No. \_8:05-cv-01015-scb-mss

Honorable Susan C. Bucklew

David Bosset, Spring Hill, Florida;  
Carel (Chad) Prater, Sarasota, Florida;  
Alex Petroski, St. Petersburg, Florida;  
Donna Gwinn, St. Petersburg, Florida;  
Sheri Redeker-Barry, Fort Myers, Florida;  
Warren Barry, Fort Myers, Florida;  
Douglas Pfeiffer, Spring Hill, Florida;  
Ralph Schlosser, Clearwater, Florida;  
Scott Sorenson, Sarasota, Florida;  
Gary Kafka, Ocean Ridge, Florida;  
Cyrus Luley, Cape Canaveral, Florida;  
George Kalivretenos, Winter Park, Florida;  
Perry Ekstrand, Yankeetown, Florida;  
Debra Ekstrand, Yankeetown, Florida;  
Harry McKay, Tampa, Florida;  
Kenneth Guthery, Tampa, Florida;  
Henry Mulder, Lakeland, Florida;  
Carl R. Tucker, Tampa, Florida;  
Ronald Galan, Palmetto, Florida;  
Pamela Galan, Palmetto, Florida;  
R. Steve Roberts, Tampa, Florida;  
Rose Charboneau, Ocala, Florida;  
Glenda P. Cranwill, Belleview, Florida;  
Paul Laird, Hernando, Florida;  
Kenneth Thompson, Belleview, Florida;  
Gary McCauley, Winter Springs, Florida;  
Charlene McCauley, Winter Springs, Florida;  
Ken Schrems, Palm Harbor, Florida;  
Kay Schrems, Palm Harbor, Florida;

Bob Hurt, Clearwater, Florida;  
Page Shuff, Miami, Florida;  
Neil Gunsalus, Okeechobee, Florida;  
Moses S. Gingerich, Sarasota, Florida;  
James S. Farnell, Lake Worth, Florida;  
Jimmy Heard, Lake Placid, Florida;  
Milton McIlwain, Orlando, Florida;  
Gene A. Webb, Orlando, Florida;  
Wanza M. Webb, Orlando, Florida;  
Frank Kuncz, Jr. Largo, Florida;

Plaintiffs,  
Jointly and Severally

v.

Internal Revenue Service, a private corporation,

Defendant

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### **PLAINTIFF'S SECOND MOTION FOR CLARIFICATION**

COMES NOW, Plaintiff David Bosset (Bosset) and in accordance with the directive of the United States Supreme Court to the inferior courts of the United States, Plaintiff hereby presents the following Motion For Clarification to this Honorable Court:

#### **PLAINTIFFS, HEREBY REQUEST THE FINDINGS AND CONCLUSIONS ON THE FOLLOWING ISSUES OF LAW**

1. Bosset wishes to obtain clarification from this Court whether or not *bona fide* evidence

exists on the record that confirms that the Internal Revenue Service (IRS) is an agency of the Federal Government thereby qualifying the Department of Justice (DOJ) to represent the IRS in this case.

**If that evidence exists on the record, please identify its location on the record with specificity and without assumption.**

2. The Administrative Procedures Act (APA) found in Title 5 United States Code (U.S.C.) *et. seq.* and the Code of Federal Regulations (CFR), outlines the need for "substantive regulations". In the adjudged decision *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301-303 (1979) the U. S. Supreme Court affirmed the requirement for "substantive regulations" to exist for a regulation to have the "force and effect of law". *State of Ohio DHS v. U.S. DHHS*, 862 F.2d 1228, 1237 (1988), confirms that agency action without supporting "substantive regulations" are "VOID".

**If the APA requirements, Chrysler, and State of Ohio identified above are not still in full force and effect, why not?**

3. **In the Department of Justice > USAM > Title 9 > Criminal Resource Manual**

**Section 664 Territorial Jurisdiction restricts jurisdiction** to "any lands reserved or acquired ... ", see 18 U. S. C. §7(3). This is consistent with the U.S. Constitution at Article 1, Section 8, Clause 17.

If the United States Attorney Manual recognizes the territorial limits in criminal prosecutions (as stated in their publication at Section 664 titled Territorial Jurisdiction), **how did the DOJ acquire authority to appear in this civil case and where and when was the territorial jurisdiction over the lands where the Plaintiffs are domiciled obtained?**

4. Further, Section 664 states, "The constitutional phrase 'exclusive legislation' is the equivalent of the statutory expression 'exclusive jurisdiction.' See *James v. Dravo Contracting Co.*, 302 U.S. 134, 141 (1937), citing, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930)".

**Does this Court recognize *Dravo*, as recognized by the DOJ in Section 664? If not why not?**

5. **Assuming the same set of facts in 3 and 4 above, how does the alleged agency IRS gain authority (jurisdiction) over any of the Plaintiffs?**

6. **The prohibitions against a direct tax are in Article 1, sec. 2:**

"Representatives and direct taxes shall be apportioned among the several States which may be included in this union, according to their respective Numbers" and also in Article 1, sec. 9, "No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken."

**Are these prohibitions in the U.S. Constitution still in full force and effect? If not, why not?**

7. **The United States Code of Federal Regulations defines direct and indirect taxes**

**as:**

Direct tax. "Direct tax" means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge. "Indirect tax" means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

**Are these definitions applicable to the Constitutional tax prohibitions mentioned in item**

**6? If not, why not?**

8. **The Federal Rules of Evidence Rule 301 (the Rule of Presumption)** operate to provide fact evidence, when allegations in pleadings are un-refuted they have the same weight of evidence as if entered onto the record by a "competent fact witness".

**If this is not true, Why Not?**

9. **IRS agents are required to follow** the U.S. Constitution (as fundamental law), U.S. Supreme Court decisions, Title 26 in the Code of Federal Regulations, and the Internal Revenue Manual when performing their official duties.

**If this is not true, Why Not?**

10. **If an IRS employee acts contrary to the U.S. Constitution** (as fundamental law), U.S. Supreme Court decisions, Title 26 in the Code of Federal Regulations, and the Internal Revenue Manual when performing their official duties, they are operating outside their official duties under "color of law" and are personally responsible for their actions.

**If this is not true, Why Not?**

11. **IRS agents are required to follow all of the mandates of Congress**, not just Title 26 items, they have no exemption relative to the other 49 titles of the U.S.C.

**If this is not true, Why Not?**

12. The Notice of Federal Tax Lien as filed in the records of the county court houses in the state of Florida contain Social Security numbers. Placing the Social Security numbers in the public record is a violation of the Privacy Act Title 26 section 6301 and subject to Title 26 Section 7431 damages.

**If this is not true, Why Not?**

13. If a Notice of Federal Tax Lien is not accompanied by an applicable court order it is considered "*inchoate*" or begun but not completed. Unless a lien is issued as a result of court order and authority it is invalid and, therefore, void.

**If this is not true, Why Not?**

14. Levy documents are published by IRS pursuant to Title 26 Section 6331. The reverse side of the Levy documents cite Section 6331(b) et al., however, 6331(a) is left off. Section 6331(a) states:

**(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. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

The underlined sentence above defines the limits of the application of Section 6331 and the unambiguous language above limits the application of Section 6331 to Government Employees.

**If this is not true, Why Not?**

15. Title 18 § 513 defines "Counterfeit Securities" as follows:

**Section 513. Securities of the States and private entities**

(a) Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined under this title (FOOTNOTE 1) or imprisoned for not more than ten years, or both.

(FOOTNOTE 1) See 1994 Amendment note below.

(b) Whoever makes, receives, possesses, sells or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine under this title or by imprisonment for not more than ten years, or both.

(c) For purposes of this section -

(1) the term "counterfeited" means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety;

(2) the term "forged" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents;

(3) the term ''security'' means -

(A) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act, money order, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement, collateral-trust certificate, pre-reorganization certificate of subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible or intangible property;

A Levy or a Notice of Federal Tax Lien, that are not supported by “substantive regulations”, would clearly and unambiguously be “falsely made” in an attempt to provide “evidence of indebtedness”. Footnote 1 refers to a fine of \$250,000.00, therefore, anyone who utters, publishes or possesses a “counterfeit security” is subject to a fine of \$250,000.00 and/or 10 years in prison. Title 18 § 514 Fictitious Obligations also applies to the Notice of Federal Tax Liens and Notice of Levy Documents issued under “color of law” by the IRS. Title 18 § 472. “Uttering counterfeit obligations or securities” also provides for penalties for issuing “counterfeit securities”.

**Question: are the Notice of Federal Tax Lien and the Notice of Levy documents issued without supporting “substantive regulations” “counterfeit securities” subject to penalty under federal law?**

**If not, why not?**

**16. Court Officers (such as Judges) are required to report violations of Federal laws**



to the appropriate federal officials for investigation and prosecution. As no documents titled Notice of Federal Tax Lien or Notice of Levy are authorized to be issued against non-governmental individuals and over 50 such documents have been identified to this Court, has the appropriate referral for investigation and prosecution been made by this Court?

**If not, why not and would the failure to report the “counterfeit securities” be a violation of federal law?**

**If yes, to whom was it reported, what is the current status of the investigation and prosecution?**

**When multiple IRS agents actively participate** in the process of creating “counterfeit securities” on a continuing basis, can their activities become a violation of the Federal and State RICO Acts?

**If not, why not?**

17. *Chilivis v. Securities Exchange Commission* 673 f.2d. 1205, 1209 (11<sup>th</sup> Circuit 1982)  
defined that a Motion to Dismiss is a non-responsive pleading. A non-responsive pleading is effectively a non-response to a complaint and, therefore, a nullity and equal to no response.

**Is the above true? If not, why not?**

18. When Congress created the Anti-injunction act, there is no indication that they intended to offer protection to illegal activities of IRS employees. Therefore, the anti-

injunction act cannot be construed to protect IRS when liens or levy documents are published or other activities unsupported by law are performed.

**Is the above true? If not, why not?**

19. *“Statements of counsel in their briefs or arguments are not sufficient for the purposes of granting a motion to dismiss or for summary judgment.” TRINSEY v PAGLIARO, D.C. Pa. 1964, 229 F. Supp. 647.*

**Does the above decision of the TRINSEY Court apply in this Court? If not, why not?**

20. **MANHATTAN GENERAL EQUIPMENT CO. v. COMMISSIONER OF INTERNAL,**  
**297 U.S. 129 (1936):**

*“The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. *Lynch v. Tilden Produce Co.*, 265 U.S. 315 , 320-322, 44 S.Ct. 488; *Miller v. United States*, 294 U.S. 435, 439 , 440 S., 55 S.Ct. 440, and cases cited.”*

**Does the above decision of the MANHATTAN GENERAL Court apply in this Court? If not, why not?**

21. **UNITED STATES v. MERSKY, 361 U.S. 431 (1960):**

**“The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force.”**

**Does the above decision of the MERSKY Court apply in this Court? If not, why not?**

22. **CALIFORNIA BANKERS ASSN. v. SHULTZ, 416 U.S. 21 (1974)**

***“... if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.”***

**Does the above decision of the CALIFORNIA BANKERS Court apply in this Court? If not, why not?**

23. **The US Supreme Court in *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) stated:**

**“A complaint is frivolous if it lacks an arguable basis in law or fact.”**

Inasmuch as the Plaintiffs cite court cases and the Defendants refer to arguments based on those cases as frivolous, are the defendants allegations of frivolous “out of order” in this case? **If not, why not?**

24. **If #23 above does not define and place limits on the use of “frivolous”, please define the acceptable use of frivolous in filings in this Court.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Bosset', written over a horizontal line.

David Bosset

Certificate of Service

I hereby certify that on January 27, 2006, I mailed a true and correct copy of the above and foregoing **PLAINTIFF'S SECOND MOTION FOR CLARIFICATION**.

TO:

Carol Koehler Ide  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 14198  
Ben Franklin Station  
Washington, D.C. 20044

A handwritten signature in black ink, appearing to read 'D. Bosset', written over a horizontal line.

David Bosset