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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES)	
)	
Plaintiff)	CR-S-04-0119 – KJD (LRL)
)	
V)	DEFENDANT’S RESPONSE
)	TO PLAINTIFF’S OPPOSITION TO
IRWIN SCHIFF, CYNTHIA NEUN)	DISMISS COUNTS 1 AND 17, SINCE
And LAWRENCE N. COHEN, a/k/a)	THEY ARE STEEPED IN FRAUD
LARRY COHEN)	
Defendants.)	
_____)	

COMES NOW Defendant, Irwin Schiff and Replies to the Government’s Opposition as to why Counts 1 and 17 must be dismissed. Defendant would also respectfully remind the court that the pleadings of pro se litigants should be “read and construed liberally,” *Haines v. Kerner*, 404 U.S. at 520(1980); *Birl v. Extelle*, 660 F.2nd 592 (1981).

First of all, the government claims that Defendant’s motion is “untimely.” However, since Defendant’s Motion goes to the jurisdiction of the Court, it cannot be “untimely.” The government also states that “Magistrate Judge Leavitt has written a report and recommendation for each of (Schiff’s) motions.” True. However, Schiff has responded to each of his reports and explained why each is flawed. However Schiff concurs with one of his findings, which was that the special agent who applied for the search warrant (which Magistrate Judge Leavitt himself issued) and all of the 15 special agents who executed that search warrant, derived whatever enforcement authority they *might* have from subsection (a) of Code section 7608. That means they only *might* have authority to enforce laws pertaining to subtitle E taxes, and not income taxes which are imposed in subtitle A. Therefore Magistrate Judge Leavitt had to conclude that he erred in issuing the search warrant and that none of the special agents who executed it (all of whom were armed), had any legal authority to do so. However, this court has yet to rule that all of the evidence derived from this, **admittedly**, illegal search and seizure must **be suppressed** , as

moved by defendant – even in the face of Magistrate Judge Leavitt having concluded (without actually saying so) that the search warrant and its execution were based upon actions of government employees who had no legal authority to act as they did. Further verification of their lack of such authority is now additionally established by the government’s inability to produce the **two documents** which are now at issue.

The government also states that “Mr. Schiff’s motion is untimely, redundant and frivolous. Therefore, the government has not addressed the arguments in his motion point by point. If the court wishes a more detailed response, the government would request a reasonable opportunity to respond.” Petitioner suggests that the government “Doth protest too much.” Producing the necessary two documents would take far less time than the “more detailed response” the government seems ready to devote in explaining why it does not have to produce the two documents requested. Producing them would obviously take up far less of the court’s time than explaining to the court why it doesn’t have to produce them. However, if the government cannot produce the documents at issue - then clearly the court cannot have subject matter jurisdiction especially to counts 1 and 17 (for the reasons already stated), and with respect to all other counts as well.

The government also observes that Schiff “previously filed (other motions) in which he rejected the court’s jurisdiction over criminal matters and questioned IRS authority,” however, since the Court has not ruled that Schiff was wrong with respect to his stand on these issues, the government’s observation is meaningless and self-serving.

The government states that Schiff “current motion is ...frivolous and unsupported by law.” How many laws does Defendant have to produce to establish the fact that without the two documents at issue, counts 1 and 17 have to be dismissed – since those charges are based on the assumption that the IRS is authorized by law to enforce the payment of income taxes? However unless these documents are produced – which Schiff would be entitled to get from the government as part of discovery since they are presumably in the government’s possession and are vital to Schiff’s defense - the government cannot claim that the IRS was legally authorized to perform any of the actions referred to in counts 1 and 17.¹

¹ While Schiff has focused on counts 1 and 17, it is clear that unless the government can produce the two documents requested the entire indictment would have to be dismissed for fraud and other obvious reasons.

However getting back to the government's claim that Schiff's motion is "unsupported by law." Schiff's motion, first of all, is supported by every statute that makes up subtitle A of the Internal Revenue Code. As Schiff stated in his motion, "There is absolutely no mention of the Internal Revenue Service in subtitle A of the Internal Revenue Code." Is that not a correct statement of the law? If not, Defendant would ask the government to quote one statute in subtitle A (in its "more detailed response") that **mentions the I.R.S** or its Commissioner.

Next Defendant stated in his motion "The Secretary of the Treasury is the only party given any authority, in the Internal Revenue Code, to assess and forcibly collect internal revenue taxes." Is that not a correct statement of the law? If not, I would ask the government to quote one statute from title 26 that gives any authority to anybody, other than the Secretary of the Treasury, to assess and enforce the payment of income taxes.

Next, defendant stated "26 U.S.C. 7701(11) & (12) provide that when the term Secretary is used in the Internal Revenue Code it 'means the Secretary of the Treasury or his delegate,' or 'any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority.'" Aren't code sections 7701(11) & (12) "law"? So how can the government claim that Schiff's motion was "unsupported by law"?

Next Schiff quoted section 6201(a) as stating:

The Secretary is authorized and required to make the ...assessments of all taxes ...imposed by this title ...which have **not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall **extend to and include the following**. (Emphasis added)

Since Petitioner read in some court decision that "When the words of a statute are clear, the statute means what it says"; to Defendant, section 6201(a) means what it says. If Defendant understands the English language, section 6201(a) says that the Secretary is only authorized to assess taxes "which have not been duly paid by stamp." And assessing taxes "paid by stamp" is apparently the only assessment "authority" which was "extended and included" in all of the following assessment provisions included in subchapter A of Chapter 63. Therefore defendant believes that the Secretary was not given any authority to assess income taxes - only taxes payable by stamp.² Since the Secretary was given no statutory authority to assess income taxes

² The legal reason for this failure was further explained in Defendant's motion.

he could not have delegated such authority to the IRS as is claimed in Count 1. If the government has a different interpretation of what section 6201(a) says it can include that in its “more detailed response.”

While Defendant did state that “before any such Delegation Order from the Secretary of the Treasury to the Commissioner could have any ‘force and effect’ with respect to the public, such a Delegation Order would have **to be published** in the Federal Register,” Defendant did not, however, cite a statute to support that claim, since he believed the government would be sufficiently aware of that principle that citing a specific statute was unnecessary. However he will now fill in that gap. Section 1505 of Chapter 15 of Title 44 requires the publication in the Federal Register of “every document or order which proscribes a penalty and has general applicability and **legal effect.**” (Emphasis added)

It is clear, that since no law in the IR Code gives the IRS or its Commissioner any assessment or enforcement authority in connection with income taxes - but gives all such authority to the Secretary of the Treasury or his delegate - no member of the public would know that - under the law - they had to pay **any** attention to the IRS in connection with income taxes. By law, the public is informed that they have to pay attention only to notices and directives they might receive from the Secretary of the Treasury **or his delegate**. Therefore, unless the Secretary of the Treasury:

- 1) Delegates, by way of a Delegation Order, his authority to assess and otherwise enforce the payment of income taxes to the Commissioner of Internal Revenue; and
- 2) Notifies the public of this, by publishing such a delegation of authority in the Federal Register;

the public would not be legally and officially notified that the IRS has any legal, authority to assess and enforce the payment of income taxes.

Therefore, Defendant’s Motion is based on the following laws.

- (1) All of the statutes in the Internal Revenue Code in which the “Secretary” is mentioned, especially such statutes as: 6201 - 6215; and 6301-6408.
- (2) All of the statutes in the Internal Revenue Code in which neither the IRS nor the Commissioner **is mentioned**.
- (3) Sections 7701(11) & (12) of the Internal Revenue Code.
- (4) Section 1505 of Chapter 15 of Title 44

Therefore, how many “laws” does Defendant have to cite to support his claim that before this Court can have subject matter jurisdiction with respect to the charges contained in the indictment, the government has to produce: (1) a document showing that the Secretary of the Treasury has delegated to the Commissioner of the IRS authority to assess and enforce the payment of income taxes, and (2) a document showing that such a delegation of authority was published in the Federal Register.

It is clear that the government secured the indictment at issue by persuading the grand jury that Schiff was illegally preventing the IRS from assessing and enforcing the collection of income taxes in a variety of illegal ways. However if the Secretary never delegated to the Commissioner of the IRS any such assessment and enforcement authority, nor notified the public that he did so, via its publication in the Federal Register, then all such representations to the grand jury were fraudulent. And an indictment secured by fraud cannot stand, and this court can not have subject matter jurisdiction based on an indictment secured by fraud. “Fraud destroys the validity of everything into which it enters,” *Nudd v. Burrows*, 91 U.S 426. “Fraud vitiates everything,” *Boyce v. Grundy*, 3 Pet. 210. “Fraud vitiates the most solemn contracts, documents and even judgments,” *U.S. v. Throckmorton*, 98 U.S. 61. Therefore, since this motion goes to the jurisdiction of this court, it cannot be “disregarded as untimely” as the government has suggested. Therefore, unless the government can produce the two documents at issue, then not only would counts 1 and 17 have to be dismissed, but all of the other counts as well, since an indictment based on fraud cannot stand. Defendant does not think he has to supply this court with “case law” to support such a proposition - since his ability to do extensive legal research is limited - and because this legal principal is fundamental, hornbook law dating back to Rome.

Ex dolo malo non oritur action

In filing this motion Defendant is not conceding that this court has any jurisdiction to limit the motions he can file on jurisdiction or even set up schedules of any kind in connection with this action, since this court has yet to rule on whether of not it has subject matter jurisdiction in this case to do anything, other than to decide the issue of jurisdiction. As far as this pro se litigant knows the Supreme Court stated in *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, that once the question of jurisdiction is raised, “it must be considered and decided, before any court can move one step further.” Therefore, since this court has not “decided” the issue of “jurisdiction,” how can it legally move “one step further” on

anything? However, since this defendant is untrained in the law and court procedure, he does not know what to do about this situation, since he has so much other litigation to attend to. So, in filing this pleading as well as others, Defendant is not conceding that the court has any jurisdiction until it decides the issue of jurisdiction, but Defendant simply does not know what else he can do.

WHEREFORE, premises considered, Defendant claims that unless the government produces the two documents requested, this court is legally bound to not only dismiss Counts 1 and 17 but the entire indictment since the indictment would have been secured by fraud.

Date: May 26, 2005

Irwin Schiff, proper

CERTIFICATION OF SERVICE

I certify that I have this date hand delivered a copy of the foregoing “Reply to the Government’s Opposition to Schiff’s Motion To Dismiss Counts 1 and 17” to MELISSA SCHRAIBMAN & DANIEL R. SCHIESS and have this day mailed copies of this Reply to all parties in this action at their respective law offices.

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Dated: May 25, 2005

Irwin Schiff