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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES) CASE NO: CR-S-04-0119-KJD-LRL
)
Plaintiff)
) DEFENDANT'S MOTION
V) TO SUPPRESS
) BANK RECORDS
) ILLEGALLY ACQUIRED
)
IRWIN SCHIFF, CYNTHIA NEUN)
And LAWRENCE N. COHEN,)
Defendants)

The government has indicated that it intends to use against me at trial bank records that it obviously acquired through the use of an IRS summons. However that summons was obviously issued by an IRS Revenue Officer¹ who, as the following will show, had no legal authority to issue such a summons. Therefore, pursuant to Rule 41 (f) of the Fed. Rules of Crim P. Defendant Schiff files this Motion to Suppress evidence that the government illegally acquired and thus cannot use against me at this trial.

LEGAL ARGUMENT

There is no provision in the Internal Revenue Code giving any authority to federal employees (whether IRS agents or not) to enforce the payment of income taxes. Indeed there is no mention of the IRS or the Commissioner anyplace in subtitle A. The IRS Commissioner was specifically given authority to enforce the payment of income taxes in the 1939 Code; however, Congress eliminated all such references and all such authority from the 1954 Code. Why? Obviously, it was Congress' intent not to give any enforcement authority over income taxes to the IRS. All such enforcement authority was given **ONLY** to the Secretary of the Treasury. However, Section 7701(11) states:

¹ I doubt that the summons was issued by the grand jury, if the bank records, however, were acquired by a grand jury summons, then, this Motion would not apply.

The term “Secretary” means the Secretary of the Treasury or his delegate.

Section 7701(12) states (in pertinent part):

- (A) In general. The term “or his delegate” –
 - (i) when used with reference to the Secretary of the Treasury, means 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, to perform the functions mentioned or described in the context

Clearly, therefore the **law requires** that before any “officer, employee, or agency of the Treasury Department” can have any enforcement authority with respect to **any provision** of the Internal Revenue Code there must be a delegation order from the Secretary of Treasury – delegating to that agency (from which “redelegations” of authority can be made) the authority to enforce any provision of the Internal Revenue Code. However, Section 44 USC 1505 requires that “every document **or order** which proscribes a penalty has general applicability and **legal effect**” (Emphasis added) must be published in the Federal Register.

Therefore, for the government to be able to use these bank records against defendant, the government must be able to show they were legally acquired by the government. For the government to show that they were legally acquired by an IRS summons, it must produce:

- 1) The Delegation Order from the Secretary of the Treasury to the Commissioner of the IRS delegating to him the authority to enforce the payment of income taxes; and
- 2) A copy of its publication in the Federal Register, if that Delegation Order is to have any “legal effect.”

In a prior Response as to why it was not producing the required two documents, the government stated that “Schiff cites no authority” that apparently required the government to produce these two documents. **The authority is contained in the statutes themselves.** By law, no government employee (IRS or otherwise) – except the Secretary of the Treasury himself- is authorized to send a summons for bank records in connection with income taxes, unless:

- 1) Either he or the federal agency he works for, received a Delegation Order from the Secretary of the Treasury, delegating to him of that agency the legal authority to enforce the payment of income taxes, and

- 2) That Delegation Order is published in the Federal Register, if such a Delegation Order is to have any “legal effect.”

It has long been held by the courts (and I am sure that this Court does not need the help of this pro se litigant to point out such cases to this court) that, “Laws passed by Congress **are not designed to be without effect.**” By this court not requiring the government to produce the two documents in question as proof that the government acquired those bank records legally, would be tantamount to this Court ruling that “Laws passed by Congress can be held to have **no effect** on what federal courts can and cannot do.”

In addition:

IRS AGENTS ARE BARRED BY THE PROVISIONS OF 26 USC 7608 FROM ISSUING SUMMONSES IN CONNECTION WITH INCOME TAXES

In establishing Code Section 7608 Congress clearly provided for two different categories of “internal revenue enforcement officers” and established **different** enforcement powers with respect to each class. Agents “by whatever term designated” all fall into to subsection (a) of section 7608; with the exception of “criminal investigators of the Intelligence Division of the Internal Revenue Service” who fall into subsection (b). Bank records are usually acquired by summonses issued by Revenue Officers. However, IRS Revenue Officers are not criminal investigator of the Intelligence Division of the Internal Revenue Service, and *Congress* **specifically placed all such Revenue Officers in subsection (a) of Section 7608**, and, stated that **BY LAW** all such Revenue Officers are only authorized to enforce those taxes that fall into “subtitle E and other laws pertaining to liquor, tobacco, and firearms.” Congress **specifically provided** that – ***BY LAW***- the *only* internal revenue agents who *might* be authorized to enforce “laws relating to internal revenue **other than subtitle E**” were criminal investigators of the Intelligence Division of the IRS. ² Therefore, since the bank records at issue were not acquired through the efforts of a criminal investigator of the Intelligence Division of the IRS (who was additionally authorized by the Secretary to do so) they **were acquired illegally.**

² Provided such Intelligence Agents were *also* **specifically charged** by the Secretary “with the duty of enforcing any of the criminal provisions of the internal revenue laws....”

Therefore, it is clear, that the bank records at issue were **illegally acquired** by the government **in violation** of: 26 USC 7601(11) and (12), 7608(a) and (b), and 44 USC 1505 ³and for that reason those records must be suppressed.

ORAL ARGUMENT REQUESTED

Dated: July 15, 2005

Irwin Schiff, pro per

CERTIFICATE OF SERVICE

I certify that I have this date hand delivered a copy of the foregoing Motion to Suppress to:

MELISSA SCHRAIBMAN
LARRY J. WSZALEK
JEFFREY A. NEIMAN
Trial Attorneys, Tax Division
US Department of Justice
333 Las Vegas Blvd., South, Suite 5000
Las Vegas, Nevada 89101

And that I have this day mailed a copy of this Motion by first class mail, to the following Attorney's of record.

CHAD BOWERS, Esq.
Counsel for Defendant Cohen
3202 W. Charleston Blvd.
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MICHAEL CRISTALLI, Esq.
Counsel for Defendant Neun
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Las Vegas, Nevada 89101

Dated July 15, 2005

Irwin Schiff, pro per

³ How can this Court, in good conscience, seek to punish private citizens for allegedly breaking the law, while it allows the government to do so with apparent impunity?