UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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| Jeffrey T. Maehr,<br><br>Plaintiff/Petitioner - Appellant,<br><br>v.<br><br>-John Koskinen, Commissioner of Internal Revenue;<br>-John Vencato, Revenue Agent;<br>-Ginger Wray, Revenue Agent;<br>-Jeremy Woods, Disclosure Specialist;<br>-William Sothen, Revenue Agent;<br>-Gary Murphy, Revenue Agent;<br>-Theresa Gates, Program Manager;<br>-Sharisse Tompkins, Disclosure Manager;<br>-Carolyn Colvin, Acting Social Security Administrator;<br>-Wells Fargo Bank, NA;<br>-John and Jane Does, 1-100,<br><br>Defendants/Respondents - Appellees. | Case No. 16-1204<br><br>**Appellant/Petitioner's Reply to Brief for Federal Appellees** |

## REPLY TO BRIEF FOR FEDERAL APPELLEES (IRS/SSA) RESPONSE ([1])

### Opening Statement

The silence in Defendants brief is deafening with regard to most evidence presented by Petitioner. Where an answer is attempted, it is false, or certainly misleading. It is obvious that Defendants are attempting to obfuscate the evidence presented and

[1] Petitioner wishes to point out that Defendant Wells Fargo Bank NA, failed to respond to suit, or rebut, and is in default, and moves this court to find it so, and to GRANT Petitioner claims and remedy as is right and just.

to distract this court from the evidence, and toward the typical mantra of "frivolous" which is itself frivolous, and expects this court to not notice such glaring obfuscation and lack of evidence, and willful, wanton disregard for standing laws.

Defendants utilize the term "frivolous" no less than 29 times throughout their alleged answer to Petitioner's clear and unambiguous evidence, somehow expecting that by repeating this distracting and erroneous phrase, it will mitigate or destroy the actual evidence, and force this court to accept mere words above evidence of record. Defendants are utilizing non-binding lower court cases to make presumptions[2] about Petitioner, and ignoring all the U.S. Supreme Court binding case law cites and facts clearly presented in Petitioner's original brief. Why is this?

Either Defendants cannot answer with strait and truthful talk, and are obfuscating the truth and depending on this Court's willingness to disregard the facts and standing laws, or they are ignorant of standing laws and court rulings.

Petitioner apologizes that he has to be so "wordy" in this Reply, but it seems that he has to resort to grade school teaching tactics once again to get a basic concept across to Defendants, and this always takes words and repetition. Reasonably made arguments and evidence presented seems to have fallen on deaf ears, which is prima facie evidence that Defendants cannot defend without resorting to hearsay and presumptions alone.

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[2] "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, p. 500; "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. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence..."); *New York Life Ins. Co. v. Gamer*, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as evidence.").

It is a shame that Defendants are allowed to make a mockery of the legal system and this court's duty to properly adjudicate the facts, rather, preferring to play nonsensical and irrelevant word games without refuting Petitioner's clear, unambiguous facts and evidence. Are Defendants trying to depend on typical, but obvious, intimidation, coercion and silent "IRS" threats to this court to avoid providing a clear answer?

Most any court in America, on any other issues, would demand a proper response to each and every challenge made or find the Defendants in default for failure to rebut the evidence. Any jury of Petitioner's peers could clearly see the evidence and facts and the lack of refuting the evidence. Will this court see it? Tens of thousands of people are watching "THIS" case and outcome which will certainly go viral via these watchers and various media also watching this case. People simply want an answer to the obvious conflicts with Defendant's actions vs. the evidence of record.

> "It is not the function of our government to keep the Citizen from falling into error; it is the function of the Citizen to keep the government from falling into error." *American Communications Ass'n v. Douds*, 339 U.S. 382, 442.

Defendants are suppressing the truth and evidence of original intent, and expecting this court to do the same and to perpetuate the obvious conflicts and coverup. Petitioner agrees with this court's assessment that the Defendants brief was deficient, and yet, it is "still" deficient of actual findings of fact and conclusions of law from any cited lower court case proving any frivolous claims, and certainly lacking any rebuttal of the binding U.S. Supreme Court case cites (case law).

## STATEMENT OF THE ISSUE

Whether the Defendants properly refuted and responded to each and every challenge presented in Appeal brief to justify the District Court's actions to dismiss claims and defense against wrongful levy of Petitioner' assets, and calling all statutes and cases cited as frivolous.

## STATEMENT OF THE CASE

Petitioner replies to Defendant's claims per the following, based on Response brief page number and/or labeled sections;

1. P. V, Defendants state that the Appeals Court "affirmed the decision of the tax court" is factually correct in that the Court can ONLY affirm what was actually before it... the motion to quash the summons. The Court had no authority to "affirm" what was not adjudicated or responded to by Defendants, especially lacking evidence of any alleged lawful debt.

2. P. 1, Defendants state that Petitioner "failed to comply with multiple court orders to file a complaint that complied with the pleading requirements of the Federal Rules of Civil Procedure..." (Repeated on P. 2, bottom, and repeated again on P. 6, last paragraph).

Petitioner denies this is of record. Petitioner did re-file once to comply as requested but was never noticed of his last filing being yet in any violation of FRCP, or how. The evidence for this is within the actual denial from the district court document in that the court never once mentioned anything about the document not then being in compliance with the FRCP, and focused solely on the standby "frivolous" argument

throughout. To use pro se lack of professional drafting attorney skills is to deny due process of law and to ignore standing case cites that uphold pro se case "substance" over "form" as previously cited.

3. P. 2, Statement of Case, first paragraph, Defendants state "Maehr did not pay his federal income taxes from 2003 to 2006 and still owes the IRS the amount of his unpaid liabilities for these years."

Defendants are presuming this statement as fact to continue to steer this court to where they want it to go. These liabilities have not been proven or properly adjudicated, plain and simple.

4. P. 3, A. Defendants stated... "Taxpayer has repeatedly resorted to the federal courts to reiterate his frivolous arguments about the internal revenue laws."

Once again, Defendants believe that if they repeat their favorite magic words "taxpayer"([3]) and "frivolous" enough times, the court will somehow glaze over and simply comply with these unproven and unsubstantiated claims.

5. P. 3, Defendants state, "he has filed no fewer than eight petitions to quash IRS summonses issued to third parties, all of which were dismissed."

This list is merely another stall tactic and misdirecting by the Defendants. These suits were on the subject of "third party summons" despite foundational legal evidence presented which was not addressed in any of these suits. That is, to repeat, the actual U.S. Supreme Court and Congressional evidence was NOT

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[3] Petitioner points out that Defendants continue to erroneously utilize the term "taxpayer" throughout although not proven in the record.

adjudicated, and lower court cases were cited which are not binding and which must be put out of view. Only U.S. Supreme Court cases are binding on this court and on Defendants.[4] This is ignored by Defendants. Petitioner stands on the "law of the land" decided decades ago by the U.S. Supreme Court on these issues.

6. P. 4, second paragraph, Defendants state... "His petition was dismissed for failure to comply with Tax Court rules, and this Court affirmed the dismissal."

Petitioner again denies this was the issue causing dismissal, per the actual dismissal documents having no mention of this failure to comply with rules.

7. P. 5, B, Defendants state in Response brief, footnote 1, "a complaint pleads no cognizable cause of action against any individual, and seeks no relief against any individuals other than the injunction against the collection of taxes, '[s]uch claims against individuals in their official capacities are claims against the United States." *citing Lonsdale v. United States*, 919 F.2d 1440, 1442 n.1 (10th Cir. 1990). This Court treats such actions as actions solely against the United". (See also Response brief, footnote 2, P. 6, and footnote 4, P. 11).

Petitioner repeats that when an officer of the U.S. Government is acting apart from lawful authority, he is acting in his "personal" capacity and not his "official"

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[4] *Internal Revenue Manual:* 4.10.7.2.9.8 (01-01-2006) Importance of Court Decisions; 1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position. 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. 3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the (IR) Service **only for the particular taxpayer and the years litigated**... (Emphasis added).

capacity.[5] Clearly when assessments and levy are made counter to the IR Code itself, against standing laws, and on something that is not "income", and especially counter to U.S. Supreme Court case law, then the officers are acting outside legal collection activities and are personally liable for the obvious damages.[6]

8. P. 7, first paragraph, Defendants state... "the Court must dismiss the action if the claims in the amended complaint are frivolous. (Doc. 12 at 2.) *See* 28 U.S.C."

The alleged claim of "frivolous" is itself based on frivolous evidence[7] and not based on the evidence presented in this instant case. How can a claim of "frivolous" be based on any other case that did not have the relevant evidence before the court to make such a ruling?

9. P. 7, first paragraph, Defendants state... "The district court found that taxpayer's pleadings had "fail[ed] to allege specific facts that support an arguable claim for relief challenging the manner in which his unpaid taxes are being collected and, to the extent he is challenging the validity of his tax liability, his tax

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[5] "...an...officer who acts in violation of the Constitution ceases to represent the government." *Brookfield Co. v Stuart*, (1964) 234 F. Supp 94, 99 (U.S.D.C., Wash.D.C.) "...an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office...The liability for nonfeasance, misfeasance, and for malfeasance in office is in his 'individual', not his official capacity..." 70 AmJur2nd Sec. 50, VII Civil Liability.

[6] C.F.R. 26 (Code of Federal Regulations) 301.6332-1(c) which states in part: "... Any person who mistakenly surrenders to the United States property or rights to property **not properly subject to levy** is not relieved from liability to a third party who owns the property..." (Emphasis added).

[7] 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; *See also Strong v. Sproul*, 53 N. Y. 499; *Gray v. Gidiere*, 4 Strob. (S. C.) 442; *Peacock v. Williams*, 110 Fed. 910. *Liebowitz v. Aimexco Inc.*, Colo.App., 701 P.2d 140, 142; *Cottrill v. Cramer*, 40 Wis. 558. The question that needs to be addressed is exactly who has the "frivolous" responses in these and past court proceedings? Defendants or Petitioner? Who has the actual evidence in fact that is being ignore and so labeled as frivolous without any rebuttal and evidence of record? (Emp. Added)

protester arguments repeatedly have been rejected by the United States Court of Appeals for the Tenth Circuit." (Doc. 12 at 3.)" (Repeated on P. 8, Summary, second paragraph).

Petitioner reiterates this claim as being erroneous. "Specific facts" and arguable stated claims for relief were clearly stated for any normal, unbiased human being to ascertain. To challenge the validity of Petitioner's alleged tax liability is his right[8] if Defendants claim he is a "taxpayer" as compared to a "nontaxpayer", which Defendants failed to address or prove in their response brief.

How much more "legitimate" can Petitioner get than using U.S. Supreme Court case law which was not responded to in any form, and other verified evidence tap-danced around? All of it is "frivolous?"

10. Pg. 7, 8, 11, and 15, Defendants state the terms " tax protester arguments" and "tax-protester" and "tax protester" and "tax-defier arguments" are used as a way to prejudice this court with presumptions, and attempting to "massage" this court's judgment using word games, and is essentially claiming something not in evidence and which Petitioner has refuted. These designations are prohibited[9] and provide prima facie evidence of more Defendant bias, and attempted misdirecting of this court away from the evidence and toward the status quo of this ongoing fraud.

11. Defendants use 28 U.S.C. § 1915(e)(2)(B)(I) throughout, which is not adjudicated law and does not take into consideration evidence presented. The District Court failed to present mandatory findings of fact and conclusions of law as

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[8] *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."

[9] Section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, prohibits the officers and employees of the IRS from designating any taxpayer "as illegal tax protesters (or any similar designation)."

to HOW the evidence and arguments were "frivolous" and in what manner are U.S. Supreme Court case law and other statutes not being based on lawful elements.

12. Pgs. 10-11, Defendants spend a lot of time quoting the same mantra about... "meritless legal theory", "a claim lacks even an arguable basis in law", "pseudo-constitutional, antitaxation theories", yet providing zero rebuttal to the evidence presented that refutes these claims. Petitioner denies that there is "no" merit in law and court cases, statutes and due process rights supporting his contentions, as his brief is full of.

13. P. 12, B, first paragraph, Defendants state... "none of taxpayer's objections to the levy, even if well-pleaded, would relieve him from collection of his taxes."

Petitioner denies this and points the court to the stated negligence by Defendants to answer the fraudulent lack of information of 6331(a) which clearly declares who is subject to such a levy. Why have Defendants ignored this clear code?

14. P. 12, bottom sentence, Defendants state... "taxpayer's Social Security payments are not exempt from levy, as he suggests. (Br. 18-19.)" and on P. 13, "There is thus no legal basis for taxpayer's claim that his Social Security payments are insulated from the IRS levy he contests."

Petitioner provided several supporting laws that suggest protection of social security retirement funds, but no rebuttal of these was forthcoming. Are these statutes "frivolous" as well? In any event, Petitioner stated that if it "was" possible for a levy to be made on social security, Petitioner, contrary to Defendants

allegations, provided clear law that it could only be "up to 15%"([10]). Even if 6334(a) does authorize a levy on Petitioner's social security, nowhere in law is such a levy authorized on the total of Petitioner's social security, and as a matter of fact, Defendants have not proven there is <u>any</u> law authorizing the "total"([11]) levy of funds. (See original brief in the District Court, Exhibit A-1). Defendants also ignored the fact that other levy actions on other American's social security([12]) is only up to 15% or less.

This also does not explain the erratic behavior of Defendants in their actions against Petitioner in previous attempts to levy "some" social security directly from the banks mentioned in the original brief, and it doesn't explain one bank denying the Defendants levy of ANY of his mother's social security money from the account Petitioner is named on. By what authority did the bank refuse to turn over said social security funds if there is no law authorizing this? By what authority are the defendants acting to take all of Petitioners social security, with the support of SS acting head Colvin?

15. P. 13, second paragraph, Defendants state... "The record does not indicate that the IRS has sought to levy directly on taxpayer's service-connected disability payments, nor on any income stream insulated from levy under I.R.C. § 6334."

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[10] Taxpayer Relief Act (Public Law 105-34), section 1024 regarding levy actions... (h) Continuing Levy on Certain Payments.– "(1) In general.--The effect of a levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such **<u>continuous levy</u>** shall attach to up to 15 percent of any specified payment due to the taxpayer."

[11] As of 8-3-16, $4182 will have been levied, all his social security, severely harming Petitioner in simply living. How would Defendants or this court try to make up such a loss?

[12] The Social Security department has ignored a FOIA request and has not provided an associate of Petitioners, now being levied at 15%, with the laws authorizing said levy on his social security. Records available.

This is a patently false statement of the facts of record. Petitioner's original brief in the District Court, Exhibits B1-4, clearly shows one attempt of the Defendants to levy his disability account directly, and Defendants admit this attempt in their Response brief (P. 4, bottom paragraph). The ONLY reason any funds were NOT taken was due to a credit card fraud purchase using that account and the account was left with nothing to be levied, as the exhibits plainly state, but which was later refunded by the bank. This levy would have been acted on had there been money in the account, and is a violation of standing statutes, and it did $100 damage (taking disability funds) to Petitioner in bank fees caused BY the direct levy action.

16. P. 13, second paragraph, Defendants state... "the only remedy available to the taxpayer would be full payment of the assessment [of his tax liability] followed by a suit for refund in district court," citing *Marvel v. United States*, 548 F.2d 295, 297 (10th Cir. 1977)."

It appears Defendants are claiming that Petitioner's due process rights under the 5th Amendment do not exist, and that the only way he could receive justice from unlawful levy is via making an impossible payment for the alleged assessment and then filing suit to obtain remedy. This is nothing more than a tyrannical banana republic position and not one of a country under the rule of law and rights.

Defendants are claiming that they can violate the standing statutes prohibiting what they attempted to do, with impunity, and place an unreasonable and unconscionable burden on Petitioner and his family. Is this justice?

17. P. 14, C, top, Defendants state... "There is no merit to taxpayer's contentions that his income is not subject to taxation or collection by levy."

Herein is the crux of this entire case and the foundational element of defense by Petitioner on this alleged assessment debt. Petitioner denies he ever claimed that any "income" he might actually acquire is "not subject to taxation". This is simply more smoke and mirror obfuscation by Defendants. It appears they either did not read Petitioner's brief and discussion on "income" or are simply unable to argue the facts and continue to raise frivolous arguments that have no basis in law. It appears Petitioner must, once again, point a light for Defendants on the grade-school level obvious data that is plain and simple.

Defendants continue to make the presumption regarding the definition([13]) of "income" in this section of argument. If Petitioner had lawful "income", it could be subject to an "income" tax if all other conditions (discussed below) were in place. This is plain in law. It is NOT the point of argument and should be set aside as such. The point of argument is that Petitioner had, and has to date, no U.S. Supreme Court lawfully defined "income" that WOULD be subject to such a tax.

Defendants go on to talk about "gross income" and "taxable income" and stating... "Section 63 of the Code defines "taxable income" as gross income less allowable deductions. Section 61(a) of the Code, in turn, defines "gross income" as "all income from whatever source derived..." however, still refusing to actually define the word "income". This leave an obvious hole which is merely traversed using presumption that "wages, salary and compensation for services" are the same as 'income". This

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[13] "Judicial verbicide is calculated to convert the Constitution into a worthless scrap of paper and to replace our government of laws with a judicial oligarchy." [Senator Sam Ervin, during Watergate hearing]. "When words lose their meaning, people will lose their liberty." [Confucius, 500 B.C.]. The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns as it were instinctively to long words and exhausted idioms, (FRIVOLOUS) like a cuttlefish spurting out ink. "George Orwell, "Politics and the English Language", 1946; English essayist, novelist, & satirist (1903-1950). (Emphasis added).

was clearly refuted by the many U.S. Supreme Court cases cited in original brief which Petitioner will not repeat herein. Why won't Defendants simply define the word "income" from law or code?

18. P. 14, C, Defendants state... "26 U.S.C. § 1,...imposes a tax on the taxable income of all individuals who, like taxpayer here, are citizens or residents of the United States."

Since Defendants wish to argue this presumptive element as well, let's do so. It is apparent that Defendants do not understand the difference between a "U.S. Citizen" and an "American National."[14] Petitioner denies being an alleged 14th Amendment, U.S. Citizen,[15] and there is no evidence of record that he ever willingly and willfully sought ("elected" for) such a 14th Amendment "U.S. Federal Citizenship" apart from his natural and separate birth citizenship in the sovereign state of Iowa, which is "without" that alleged "U.S."

Defendants are claiming Petitioner is a "United States Citizen" OR[16] "Resident" of the "United States." Which "United States" are Defendants claiming Petitioner is a

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[14] The Naturalization Act of 1802, Seventh Congress, Session 1, Chapter 28, Sections 1-4, April 14, 1802 sets forth the exact requirements necessary for anyone born in an American state to become a United States Citizen.

[15] *Kitchens v. Steele,* 112 F.Supp 383; "A citizen of the United States is a citizen of the federal government . . ."

[16] It should be noted that the Defendants admit there is a difference between "citizen" and "resident" of the "United States", and that either status imposes an "income" tax on such a citizen OR resident. How can someone be a "resident" and NOT a "citizen? How can someone be a "citizen" and NOT a "resident"? This will be addressed herein.

"citizen or resident of" which automatically imposes an "income" tax on him? How is "United States" defined in law?

> "United States. This term has several meanings. [1] It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, [2] it may designate territory over which sovereignty of United States extends, or [3] it may be collective name of the states which are united by and under the Constitution. *Hooven & Allison Co. v. Evatt*, U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252." [Black's Law Dictionary, Sixth Edition].

Petitioner maintains that he is NOT a citizen within the first two definitions, and is a man living on the land of Colorado as part of the collective United fifty States which is outside the first two jurisdictions until proven otherwise. The courts are clear on this issue:

> *Cory et al. v. Carter,* 48 Ind. 327 1874, head note 8; "The first clause of the fourteenth amendment made Negroes citizens of the United States, and citizens of the State in which they reside, and thereby created two classes of citizens, one of the United States and the other of the state."

> *United States v. Wong Kim Ark,* 169 US 649, 692. (1898); "The object of the 14th Amendment, as is well known, was to confer upon the colored race the right of citizenship."

Two classes of citizenship, the new one being a new "federal" citizenship status, and a state citizenship, both for blacks. The new federal citizenship did not apply to

any others in the 50 states because they already had a citizenship that was relevant. Notice what the court stated prior to the 14th Amendment...

> *44 Maine* 518 (1859); ". . . [F]or it is certain, that in the sense in which the word 'Citizen' is used in the federal Constitution, 'Citizen of each State,' and 'Citizen of the United States,' are convertible terms; they mean the same thing; for the 'Citizens of each State are entitled to all Privileges and Immunities of Citizens in the several States,' and 'Citizens of the United States' are, of course, Citizens of **all the United States**." (Emphasis added).

The above clearly shows the "United States" as meaning the "United several States", the now fifty states we have today.

> *U.S. v. Cruikshank,* 92 U.S. 542 1875; "We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, **and each has citizens of its own** . . ." (Emphasis added).

> *Thomas v. State,* 15 Ind. 449; "One may be a citizen of a State and yet not a citizen of the United States." (See also *Cory v. Carter,* 48 Ind. 327 [17 Am. R. 738]; *McCarthy v. Froelke,* 63 Ind. 507; In Re *Wehlitz,* 16 Wis. 443. *McDonel v. State,* 90 Ind. 320, 323, 1883.)

Petitioner claims this distinction as NOT being the "U.S. Citizen" Defendants claim he is with a blanket presumption of such, and simply being an American

National([17]) living in one of the areas "outside" ("without"([18])) the "United States citizenship jurisdiction", and not "within" said jurisdiction...

> *Republica v. Sweers,* 1 Dallas 43. and 28 U.S.C. 3002 (15); "UNITED STATES is a corporation and that it existed before the Revolutionary war. The United States is not a land mass; it is a corporation."
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> *Slaughter House,* 83 U.S. 36. (1873) "It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual."
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> *Gardina v. Board of Registrars of Jefferson County*, 48 So. 788, 790, 791, 160 Ala. 155]. "There are, then, two classes of citizens; one of the United States, and one of the state. One class of citizenship may exist in a person without the other, as in the case of a **resident of the District of Columbia**." (Emphasis added).

The idea of something that was only one conglomerate "United States" as most consider "the" United States today, was never the case. Each State is a separate

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[17] Simply reviewing any U.S. passport and you will see the clear distinction between "citizen/national". The symbol "/" is a virgule ("A short oblique stroke (/) between two words indicating that whichever is appropriate may be chosen to complete the sense of the text in which they occur." (Dictionary ) It means, OR... "The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection." U.S. Citizen OR American National.

[18] A Citizen of one of the 50 States, residing therein, is a nonresident alien with respect to this local taxing power of Congress and is "without" the federal territory, "United States".

entity and is part of the "United several States of America" and outside the Federal jurisdiction except for 1:8 of the Constitution...

> *McCulloch v. Maryland,* 4 Wheat 316, 403 (1819). "No political dreamer was ever wild enough to think of breaking down the lines which separate the states and compounding them into one common mass."

Citizens of their respective states, as Petitioner is, are NOT "citizens of this Defendant's "United States", by law unless electing to be so. This brings us back to the issue of "citizen" OR "resident" of the "United States" as addressed in footnotes 14-18. *Gardina*, supra, states... "One class of citizenship may exist in a person without the other, as in the case of a resident of the District of Columbia."

For example, (and this is why it is so confusing and how it has been kept undercover for so long), Petitioner living in Colorado lives "without"[19] the District of Columbia or any other territorial part of "The United States". Someone may choose to move to this "United States" (or territory) and is thus a "resident alien" living is this jurisdiction, but still NOT be a "citizen" of this "United States". This would "impose" on him an "income" tax, if he should have such "income". He could also "elect" (or neglect to refute presumption) to be a "United States" federal citizen, and would again have an "income" tax imposed on what lawful "income" he might have.

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[19] All income tax provisions under 26 U.S.C., subtitle A (an excise tax on "income"), are divided between sources WITHIN and WITHOUT the "United States". They are imposed upon the worldwide income of citizens of the "United States" and aliens residing therein, and upon nonresident aliens (of all kinds) receiving income from sources WITHIN said "United States" and WITHIN the other parts of the American Empire which fall WITHIN the exclusive legislative jurisdiction of the Congress of the "United States", (pursuant to 1:8:17 and 4:3:2 of the Constitution.

One could also be a "nonresident alien" (see Exhibit "Non-resident alien v. Citizen of the U.S.") living in one of the 50 States, but receiving "income" FROM sources WITHIN "The United States" (or territories), and the government could "impose" an "income" tax on said "nonresident" alien, if he had lawful "income".([20])

In 26 U.S.C., Section 7701(b)(1)(A) & (B), Congress defined the statutory difference between "resident alien" and "nonresident alien" as follows:

> (b) Definitions of Resident Alien and Nonresident Alien. --
> (1) In general. -- For purposes of this title ...
> (A) Resident Alien. -- An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (I), (ii), or (iii):
>
> (i) Lawfully admitted for permanent residence. -- Such individual is a lawful permanent resident of the United States at any time during such calendar year.
> (ii) Substantial presence. -- Such individual meets the substantial presence test of paragraph (3).
> (iii) First year election. -- Such individual makes the election([21]) provided in subparagraph (4,) *(First-year election-added).*

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[20] 872 Gross income: (a) General rule. In the case of a nonresident alien individual gross income includes only (1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and (2) gross income which is effectively connected with the conduct of a trade or business within the United States. (See footnote #23 on "trade or business")

[21] See also 26 USC 6013(g), and Exhibit "Non-resident alien v. Citizen of the U.S."

(B) Nonresident Alien. -- An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

Petitioner is not a "resident" (as that term is defined in the above statutes) nor is he a citizens of this "United States"([22]) and does not reside "within" this "United States" as Defendants claim, nor did he ever "elect" for such a status. Petitioner is a nonresident alien as that term is defined in subsections (B) and (A)(i), (ii), and (iii), and has the same status as the Plaintiff in *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1. He is not a subject of that federal "United States".

This entire topic of "nonresident alien" was addressed in the Knox brief, Case No. SA-89-CA-1308, Consolidated with SA-89-CA-0761, which clearly details the obfuscation and word-smithing within the I.R. code on this topic. Petitioner sees no jurisdictional authority by Defendants over him where he lives.

19. P. 15, first paragraph, Defendants state... "Congress intended through § 61(a) ... to exert 'the full measure of its taxing power,' ...and to bring within the definition of income any 'accessio[n] to wealth.'"

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[22] "I have no doubt that those born in the Territories, or in the District of Columbia, are so far citizens as to entitle them to the protection guaranteed to citizens of the United States in the Constitution, and to the shield of nationality abroad; but it is evident that they have not the political rights which are vested in citizens of the [s]tates. They are not constituents of any community in which is vested any sovereign power of government. **Their position partakes more of the character of subjects than of citizens**. **They are subject to the laws of the [federal] United States**, but have no voice in its management. If they are allowed to make laws, the validity of these laws is derived from the sanction of Government in which they are not represented. Mere citizenship they may have, but the political rights of [C]itizens they cannot enjoy until they are organized into a State, and admitted into the [u]nion." California Supreme Court - *People v. De La Guerra*, 40 Cal. 311, 342 [1870]. (Emphasis added.)]

Petitioner agrees wholeheartedly with this claim. The problem is that Defendants do not discern the difference between making a living to survive and exist, and that of creating (deriving) "income" which is "accession to wealth" that is above and beyond any basic living. They are not the same excise taxable events.

As has been repeatedly stated by the U.S. Supreme Court, "income" is NOT a profit or "accession to wealth", and IS an excise tax on the exercise of privilege, (See 44 Congressional Record for clear details of this truth) such as making unearned "income", and other "derived" income from whatever sources.

20. P. 15, first paragraph, bottom, Defendants state... "Because taxpayer apparently concedes (Br. 11) that he received 'wages' and has never alleged that the amounts he received fell below the exemption amount, it follows that he was subject to tax under § 1 and was required by § 6012(a) to file a return."

Petitioner denies this presumption based on the above, and on the following. Petitioner has provided the evidence that "wages, salary and compensation for services" are different than "gains, profit and income" via U.S. Supreme Court case law. The can of worms opens even more with the following presumption suggested in the I.R. Code itself. Defendants make presumptions that Petitioner, working for a living, is engaged in a taxable "trade or business"([23]) which makes him liable to file an income tax return. Is this valid?

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[23] 26 CFR §301.6109-1(b), where "trade or business" is defined as "the functions of a public office" per 5 USC §552(a)(13) "federal personnel", federal "employee" 5 USC §2105.

26 U.S.C 7701; (26) "Trade or Business; The term 'trade or business' includes([24]) (is ONLY) the performance of the functions of a public office." (Emphasis added).

Petitioner denies such a position or anything related to such a position. In addition, clearly explained in the original brief, even "IF" Petitioner's wages for working was proven to be lawful "income", all his assets in some business or other account were NOT such "wages, salary or compensation for service", or subject to an "income" tax. This is a frivolous and fraudulent claim but what Petitioner was clearly assessed on.

Defendants assessed every business deposit in the business account records as "income", which is fraud, and such customer deposits couldn't possibly be presumed to be "wages" as claimed by Defendants. In addition all of the expenses for said business were also considered by Defendants as "income", and assessed, which is more evidence of fraud against Petitioner.

21. P. 15, last paragraph, Defendants go on to state Petitioner's challenges, but without even a shred of evidence to refute these, and on P. 23, even go on to raise new issues not before this court, as mere distractions and to bias this court against Petitioner.

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[24] Treasury Decision 3980, Vol. 29, January-December, 1927, pgs., 64-65; "(1) **To** comprise, comprehend, or embrace ... (2) To enclose within; contain; confine... but granting that the word 'including' is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited preceding general language ...The word 'including' is obviously used in the sense of its Synonyms, comprising: comprehending: embracing. "

## CONCLUSION

If this court is not willing to hear and receive rebuttal to all the claims made, then Petitioner is wasting his time in attempting to receive due process of law and in receiving a fair and impartial hearing of all the facts alleging a debt and jurisdiction of Defendants over Petitioner. Defendants want this court to depend on hearsay and presumptions as facts, which Petitioner has proven is not evidence.

Millions of Americans know about these facts, and millions more are learning of it over the months. What will Americans do when they learn this truth and that the Defendants, with the help of the courts, have suppressed this and has cost them trillions of hard-earned dollars NOT subject to this tax?

Defendants want this court to roll over and to obey their dictates and to disregard the lack of real answers to real questions, (troubling and upsetting though they may be) with real evidence, but which steadfastly is ignored and cast aside with no lawful evidence other than weak and impotent claims of "frivolous".

If the Court wishes, it can access the 44 Congressional Record - Senate - JUNE 16, 1909 for the clear and unmistakable discussion on the true nature of the 16th Amendment and what was original intent of Congress and the President. This is being suppressed by Defendants in this case.

Petitioner is now having to prepare to lose his place of residence, and to default on multiple monthly debts and lose electricity, phone, vehicle, and the ability to eat, among other things, all because of this unlawful activity against him.

Any number of Amicus briefs from independent parties are available should the court want more evidence. Will the Defendants be allowed to get away with this obvious violation of law and Petitioner's right to be heard under the law?

Petitioner moves this court to GRANT Petitioner a fair and impartial adjudication of all the facts, and for remedy as previously stated, or as this court deems right and just.

Respectfully submitted,

7-29-16 Jeffrey T Mader

Date Signature

## CERTIFICATE OF COMPLIANCE

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Reply Brief is 23 pages, but that the word count is less than 7000.

7-29-16 Jeffrey T Mark

Date Signature

## CERTIFICATE OF SERVICE

I hereby certify that on 7-29-16, I served a copy of the Appellant/Petitioner's Reply Brief, by United States Postal Mail, to the below named counsel for Federal Appellees, and non-responding Wells Fargo Bank, at the addresses stated.

1. Julie Avetta, Appellate Section, P.O. Box 502, N.W., Washington, D.C. 20044.

2. Wells Fargo Bank, NA, P.O. Box 29728, Phoenix, AZ 85038-9728.

7-29-16 Jeffrey T Mark

Date Signature

**Exhibit - Non-resident alien v. Citizen of the U.S.**

**26 USC §6013 (g) [Election to treat nonresident alien individual as resident of the United States]**

Once a statutory **'election'** under **26 USC §6013 (g) or (h)** was initially established, those Nonresident Alien Individuals who made that 'election' immediately became a federal statutory 'Taxpayer' and their former nontaxable income is then deemed taxable in an identical manner to that of a US Resident Alien. The 'election' also became automatically applicable for all taxable years following as stated at 26 USC §6013 (g) (3) Duration of Election.

The Nonresident Alien Individual thus became 'voluntarily liable 'via this 'election' for a tax never levied upon them and their entire private sector employer paid wages were taxed under Chapter 24 of the Internal Revenue Code. This wage withholding taxation was also automatically applicable for all taxable years following the initial 'election' as part of the Duration of Election section at 26 USC §6013 (g) (3).

The statutory term Nonresident Alien Individual is defined at 26 USC §7701 (b)(1)(B) and is expressed in this statute in the following manner:

> *"An Individual is a Nonresident Alien if such individual is neither a [statutory] citizen of the United States [District of Columbia per 26 USC §7408(d)] nor a resident [Alien or foreigner from another nation] of the United States [District of Columbia per 26 USC §7408(d)]." [Emphasis & Clarification added]*

What is immediately noticeable is that the definition only tells the reader what a Nonresident Alien Individual is not rather than what it is. Such purposeful obfuscation is vitally important to recognize. The true meaning of the statutory term Nonresident Alien Individual is none other than American Nationals who were born in one of the 50 states of the Union [the Constitutional Republic]. This is amply illustrated in reading 26 CFR 1.871-1 (b) (4) Expatriation to avoid tax. This regulation section reads as follows:

> *"For special rules applicable in determining the tax of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes, see section 877."*

In regard to Expatriation, One CANNOT simultaneously be BOTH a CONSTITUTIONAL citizen AND a STATUTORY citizen at the same time, because the term "United States" has a different, mutually exclusive meaning in each specific context [Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873)] which election is only with American Nationals [those born in one of the 50 states of the Union] enjoy the election. Therefore, the term 'Nonresident Alien Individual' and 'American National' are synonymous.

The **Legislative Intent of the 16th Amendment to the Constitution**, written by former President of the United States [POTUS] William H. Taft documents that Congress was only able to levy the Federal Income Tax upon the National Government itself. Therefore, American Nationals who choose to work for the National Government are the primary statutory 'Taxpayers'.

NOTE: The use of the term 'American National' is a non-statutory phrase created to eliminate confusion with the statutory term "U.S. Citizen" as referenced in various sections of Title 26. It means those born in one of the 50 states of the Union, those born to parents of which at least one of them were born in the 50 states, or those naturalized into the Constitutional Republic.
Former POTUS Taft stipulated in the foundational document, the Legislative Intent of the 16th Amendment, that:

> *"The **decision of the Supreme Court** [Pollock v Farmer's Loan & Trust Company, 157 U.S. 429, 1895] in the income tax case **deprived the National Government of a power** which, by reason of previous decisions of the court, it was generally supposed that government had. I therefore recommend to the Congress that both Houses, by a two-thirds vote, shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population."* 44 Congressional Record - Senate - JUNE 16, 1909, [From Pages 3344 – 3345]

The power to ignore the Constitution only exists in a jurisdiction in which the Constitution does not apply...the only jurisdiction is the 10 mile square area referred to in the Constitution as "the District of Columbia."

**Nonresident Alien Individuals [American Nationals]** are only liable for the Federal Income Tax if they choose to make a statutory 'election' [described at 26 CFR 1.871-1(a) Classification of Aliens] by filing a Form 1040 US Individual Income Tax Return for a tax they never were made liable for prior to the 'election'. Per *Clark v. United States*, 95 U.S. 539, a statutory 'election' is not a valid contract.

Via **26 USC §6013(g)** this statutory 'election' allows the National Government to treat or tax the income of those never imposed with the Federal Income Tax. American Nationals a.k.a. Nonresident Alien Individuals are then treated identically to that of foreigners who are legal Taxpayers called US Resident Aliens who live and work in one of the 50 states of the Union [the Constitutional Republic] or the District of Columbia.

The Lack of Tax Liability and the right of Nonresident Alien Individuals to choose not to make an 'election' were established by the Legislative Intent of the 16th Amendment written by former POTUS William H. Taft on June 16, 1909. American Nationals have always been Lawful Non Taxpayers as they were excluded. This foundational document which clears up the question of just who the parties are that the Federal Income Tax has actually been levied upon was promulgated in the Congressional Record of the United States Senate on pages 3344-3345. The

federal income tax was only levied upon the National Government. It also ignored the Rule of Apportionment, a mandatory requirement in the Constitution, further pinpointing the only operational jurisdiction to be the District of Columbia and US Territories.

The Federal Income Tax was only levied upon the National Government which is to say those Americans who have chosen to work for the National Government in one of its myriad of Public Offices. "Performing the functions of a public office" which is the statutory definition of a 'Trade or Business' per 26 USC §7701 (a)(26).

Within the regulations used by the Internal Revenue Service, one can locate the voluntary nature of Nonresident Alien Individuals [meaning American Nationals] being offered the option or choice to make an 'election' or not. By the fact that the 'election' is a voluntary choice, the option to Americans has not been broadcast to the American Public. The voluntary choice to make an election or not, illustrates that the National Government has been successful in burdening Americans with an obligation that was never imposed by law outside of making an 'election'.

**26 CFR 1.871-1 Classification and manner of taxing alien individuals** is the regulation in particular that demonstrates the voluntary nature for American Nationals to exercise the choice to make an 'election' to have their income taxed or treated like that of a Resident Alien.

**26 CFR 1.871-1 (a) Classes of aliens**, states:

> *"For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as* [statutory] *citizens* [legal fictions] *of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See § 1.1-1(b).*
>
> ***Nonresident alien individuals are taxable only** on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States [meaning only the District of Columbia per 26 USC §7408(d)].*
>
> *However, nonresident alien individuals* [American Nationals] *may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code."* [Emphasis & Clarifications added]

The last paragraph above shows that Nonresident Alien Individuals or rather American Nationals are offered the **choice** by use of the statutory expression **"may elect"** to have their income treated [taxed] as that of a U.S. resident alien. The expression **"may elect"** clearly signifies that there is no mandatory obligation to file a Form 1040 US Individual Income Tax Return or pay that tax.