UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case.

Petitioner, affirming he is a free man living on the land of Colorado, and not a corporate person or other agent, or federal citizen or employee, filed suit against Defendants for lack of proof of debt, wrongful tax assessment, and unlawful taking of all assets under color of law([1]), apart from standing statutes and IR Code protecting Petitioner's assets, which shocks the conscience.([2]) Petitioner was denied due process right to be heard under the 5th Amendment([3]) by Defendants, and Judge Babcock who is deemed to know the law([4]), (as Defendants are so deemed to

---

[1] Color of law: "The appearance or resemblance, without the substance, of legal right. Misuse of power... and made possible only because wrongdoers are clothed with the authority...is action taken under 'color of law.'" *Atkins vs. Lanning*, D.C. Okl., 415 F.Supp. 186, 188." Black's Law Dictionary, 6th Edition;

> "...it's a federal crime for anyone acting under "color of law" to willfully deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law. 'Color of law' simply means the person is using authority given to him or her by a local, state, or federal government agency. The FBI is the lead federal agency for investigating color of law violations, which include acts carried out by government officials operating both within and beyond the limits of their lawful authority." https://www.fbi.gov/about-us/investigate/civilrights/color_of_law

[2] 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).

[3] 5th Amendment; "No person shall be...deprived of life, liberty, or property, without due process of law.."; "The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable** searches and **seizures**, shall not be violated... United States Constitution, Bill of Rights, Article IV. (Emphasis added.)

> "In this case the sole question is whether there has been a taking of property without that procedural due process that is required by the Fourteenth Amendment. We have dealt over and over again with the question of what constitutes 'the right to be heard' (*Schroeder v. New York*, 371 U.S. 208, 212) within the meaning of procedural due process. See *Mullane v. Central Hanover Trust Co*., 339 U.S. 306, 314 . In the latter case we said that the right to be heard 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether [395 U.S. 337, 340] to appear or default, acquiesce or contest.' 339 U.S., at 314 . In the context of this case the question is whether the interim freezing of the wages without a chance to be heard violates procedural due process. - Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing (cf. *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 423) this prejudgment garnishment procedure violates the fundamental principles of due process." *Sniadach v. Family Finance Corp*., U.S. Supreme Court (1969).

[4] "Officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity,

know the law). Babcock has committed Fraud on the Court,([5]) and has shown contempt for the court process, contempt of U.S. Supreme Court standing precedent, Congressional testimony, and other standing law cited by Petitioner. Babcock has also shown contempt of his oath of office, and contempt for Petitioner defending himself (his ONLY choice) from these unlawful actions, calling it all "frivolous"([6]) without any mandatory Findings of Fact and Conclusions of Law([7]) in support of this "frivolous" finding.

---

judicial or otherwise, in matters of rights secured by the Constitution for the United States of America." *Owen vs. City of Independence*, 100 S Ct. 1398; *Maine vs. Thiboutot*, 100 S. Ct. 2502; and *Hafer vs. Melo*, 502 U.S. 21;

[5] The court erred in multiple ways denying the proper function of the court to occur and lawful adjudication of clearly defined laws and evidence, making it a fraud on the court functions. 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 also 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."

[6] 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?

[7] "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission v. South Carolina State Ports Authority, et al.* certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

Petitioner filed for reconsideration asking which parts of the U.S. Supreme Court case precedent and definitions of "income", and other stated laws, were "frivolous", and in what way, but was denied any answer, and Petitioner still asks this question of this court herein.

Petitioner wishes to emphasize that ALL previous court cases citing some similar challenges were "frivolous" did not have Petitioner's actual case evidence presented before the courts (and by code should not have been cited or alluded to by the Court or Defendants against Petitioner - see "Importance of Court Decisions" cited at #7, P. 23, below) and therefore no adjudication of Petitioner's actual evidence took place.

Certainly Petitioner's challenges have never been adjudicated with any lawful evidence or rebuttal to standing statutes, codes and U.S. Supreme Court cases and Congressional testimony Petitioner stands on.

Lastly, these individual issues presented herein are certainly related to each other, but each stands on its own merits and none are dependent on any other issues herein. Each deserves individual and careful scrutiny of the evidence, and scrutiny of Defendants lack of evidence or rebuttal to the facts under due process.

Does Petitioner have any right to be heard under due process on all the facts and evidence presented? He has no contract with Defendants Koskinen/agents, of any kind, so this is a form of piracy on the land against Petitioner.

2. Statement of Facts Relevant to the Issues Presented for Review.

A) Defendants Koskinen/agents have repeatedly claimed that the 16th Amendment is their authority to tax Petitioner's assets, but have neglected to show exactly how this is in evidence in their specific actions against Petitioner.

B) Defendants Koskinen/agents have persistently failed to rebut original, standing U.S. Supreme Court precedent and Congressional testimony, and other evidence of record presented to them on the true, originally-defined word, "income".

C) Defendants Koskinen/agents created unlawful assessments against Petitioner based on the unproven claims regarding what is "income" Petitioner had, and claim all Petitioner's wages and all other assets are somehow "income" that can lawfully be taxed by the government and thus, taken at will.

D) Defendants Koskinen/agents created fraudulent Notices of Levy, apart from lawful levy documents, and with intent to mislead recipients on their authority to directly Levy Petitioner's assets, specifically withholding vital information in the levies that clearly detail who can be directly levied and on what.

E) Defendants Koskinen/agents proceeded to unlawfully garnished the entirety of Petitioner's assets apart from 5th Amendment due process rights and other standing laws, which they knew or should have known about, which protects at least 85% of his social security, protects ALL of his Veterans Disability Compensation, and all his business fund that are not proven lawful "income".

F) Defendants Colvin/unknown SSA agent, and Wells Fargo Bank, both colluded with Koskinen/agents in the taking of his assets, and acted apart from standing due process protections, and standing statutes and code, which they knew or should have known about, which protects Petitioner's assets.

G) Defendants Koskinen/agents, claiming to represent the "Internal Revenue Service", and to be lawfully authorized to act on behalf of this alleged U.S. Government agency, have failed to provide evidence refuting previous government claims and other evidence of NOT being a lawful U.S. government agency.

3. Statement of Issues.

a. First Issue: The Defendant's Koskinen/agents claim the authority to directly tax Petitioner's property in the way of "wages, salary or compensation for services" stems directly from the 16th Amendment, but this has been refuted by the U.S. Supreme Court.

Argument and Authorities:

Prior to the 16th Amendment, the Supreme Court found that direct taxation of wages was unconstitutional and that "income" tax was to be an excise tax on the conduct of business in a corporate capacity, (See Second Issue below for more discussion and authority on "income"), and a tax on other Privilege([8]), and not on any right([9]) to work. The 16th

---

[8] "The requirement to pay [excise] taxes involves the exercise of privilege." Flint v. Stone Tracey Company, 220 U.S. 107, 108 (1911).

[9] "The legislature has no power to declare as a privilege and tax for revenue purposes, occupations that are of common right." *Sims vs. Ahrens*, 167 Ark. 557; 271 S.W. 720, 730, 733 (1925).

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but, the individual's rights to live and own property are natural rights for the enjoyment of which **an excise cannot be imposed**." *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401 (1958). (Emphasis added - "excise" discussed below).

"It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional... A state [or federal government-Petitioner] may not impose a charge for the enjoyment of a right granted by the federal Constitution." *Murdock v Pennsylvania*, 319 US 105, at 113; 480, 487; 63 S Ct at 875; 87 L Ed at 1298 (1943); "The right to engage in an employment, to carry on a business, or pursue an occupation or profession not in itself hurtful or conducted in a manner injurious to the public, is a common right, which, under our Constitution, as construed by all our former decisions, can neither be prohibited nor hampered by laying a tax for State revenue on the occupation, employment, business or profession." *The Antelope*, 23 U.S. 66, 120.

"Among these unalienable rights, as proclaimed in the Declaration of Independence, is the right of men to pursue their happiness, by which is meant, the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well said that, the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable ...to hinder his employing.., in what manner he thinks proper, without injury to his neighbor, is a plain violation of the most sacred property." *Butchers' Union Co. V. Crescent City*, CO., 111 U.S. 746, 757 (1883); 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

Amendment did NOT provide for a "new" tax on wages that did not exist prior to the 16th Amendment.([10])

Petitioner has repeatedly requested where, then, does the authority to directly tax Petitioner's wages([11]) or any of his assets as "income" come from if not the 16th Amendment? This, too, has only been met with more silence and improper collection activities([12]). If we are to believe the Supreme Court that the 16th

---

and national prosperity." *Slaughter - House Cases*, 83 U.S. 36, at 127 (1873).

[10] "The Sixteenth Amendment to the Constitution has not enlarged the taxing power of Congress..." 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.

> "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." *Brushaber v. Union Pac. R.R. Co.,* 240 U.S. 1, 11, 12, 18 (1916);
>
> "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**." ([14-15]*; Peck & Co. v. Lowe,* 247 U.S. 165 (1917). Brief for the Appellant at 11, 14-15; See also *Stratton's Independence, LTD. v. Howbert*, 231 US 399, 414 (1913)." (Emphasis added - "derived from" discussed below).
>
> "... It manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation." *Evans vs. Gore,* 253 US 245, 263 (1920).
>
> "It was not the purpose or effect of that amendment to bring any new subject within the taxing power." *Bowers v. Kerbaugh-Empire Co.,* 271 U.S. 170; 46 S.Ct. 449 (1926);

[11] "Thousands of individuals in this State carry on their occupations as above defined who derive no income whatever therefrom." *Sims v. Ahrens*, 271 SW 720 (Ark. 1925).

[12] The IRS was previously chastised about such silence by the U.S. Supreme Court but has completely ignored it... "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**." *U.S. v. Twee*l, 550 F.2d 297, 299. See also *U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmine v. Bowen*, 64 A. 932.

Amendment confers "no new power of taxation", (Evans , infra), to tax wages as "income", what law then authorizes the Defendant's Koskinen/agents to directly assess Petitioner's wages/assets that are NOT lawfully proven "income", let alone garnish the entirety of his V.A. disability and social security living under false claims and assessments? What part of the above court cites are frivolous?

b. Second Issue: Supposing, but disputed, that the 16th Amendment HAS authorized a "new power of taxation" to tax Petitioner's "wages" as "income", Defendants Koskinen/agents continue to erroneously call what they please as "income" that can be taxed, but without any evidence in fact or of record.

Argument and Authorities: The term "income" is not defined in the I.R. Code (U.S. v. Balard, infra), so Petitioner, required to know the law and determine whether he had any lawful "income" and was "subject to and liable for" an income tax, had to look elsewhere for the definition, which the Supreme Court amply supplied. However this evidence created conflicts with Defendant's Koskinen/agents claims against Petitioner.

Petitioner has repeatedly requested documentation from Defendants Koskinen/agents refuting the lawful original standing definition of "income".

"Income", as originally defined by all the Supreme Court cases, is not "everything that comes in," (Doyle, infra), is not directly on "wages", and is a "corporate profit" or "unearned wealth"([13]), or something that could be "derived from" wages. (See detailed discussion on "derived" below). Defendants Koskinen/agents, despite repeated notices of the standing cases, refused to provide an answer to evidence presented.

U.S. Supreme Court case precedent and authorities are cited below. These cases have never been overturned and certainly calls into question the Defendants Koskinen/agents hearsay and presumptions (which is NOT any kind of evidence([14])) regarding liability on Petitioner's assets, wages or other

---

(Emphasis added). (It IS, obviously, "routine").

[13] 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.' "

[14] "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

compensation, and all his business assets being “income”;

> ✦ Helvering v. Edison Bros. Stores, 133 F2d 575. (1943); “The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment.”
>
> ✦ Doyle v. Mitchell Brother, Co., 247 US 179 (1918); “We must reject in this case . . . the broad contention submitted in behalf of the Government that all receipts — everything that comes in — are income within the proper definition of the term ‘income’...”
>
> ✦ Edwards v. Keith, 231 F. 110 (2nd Cir. 1916); “It taxes only income ‘derived’ from many different sources; one does not ‘derive income’ by rendering services and charging for them.”

Webster's Dictionary defines "derived" as; "to take, receive, or obtain especially from a specified source," and “to take or get (something) from (something else).” The property (wage or compensation) would be the parent substance (principal) and the "gain, profit or income" would be a separate "derivative" obtained from the parent substance. Webster's Dictionary defines "from" as "to show removal or separation," and “used to indicate the place that something comes out of.”

> ✦ Southern Pacific v. Lowe, U.S. 247 F. 330. (1918); “... [I]ncome; 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.’ ”
>
> ✦ 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

---

(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.“).

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 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).

Defendants Koskinen/agents clearly make no distinction between "wages" and "income" calling them the same thing, but wages are not "gain" or "profit, and certainly any other assets sitting in an account are not "income" unless proven to be "derived from" something else, and cannot be used as frivolous evidence of a tax liability, or for an unwarranted assessment against Petitioner.

✦ "Treasury Department's Division of Tax Research publication, 'Collection at Source of the Individual Normal Income Tax,' 1941. " For 1936, taxable income tax returns filed represented only 3.9% of the population... likewise, only a small proportion of the population of the United States is covered by the income tax."

Are we to believe that there were so few Americans working for a living in 1939 that only 3.9% were involved with making "wages"? Of course not. Most people

then had NO lawful “income” (gain or profit derived from something...) and their wages were not classified as “income.” Seeing that wages were NOT defined as “income” (U.S. v Ballard, supra), i.e., “gain” or “profit”, by what authority can Defendants Koskinen/agents claim such today, except, “because we say so” or “this is the way its been for decades”, “everyone knows...”?

✦ 26 U.S.C.A.499 '54, Sec. 61(a). "Under the Internal Revenue Act of 1954 if there is no gain, there is no income."

✦ U.S.C.A. Const. Am 501 16. "There must be gain before there is 'income' within the 16th Amendment."

✦ "The true function of the words 'gains and profits' is to limit the meaning of the word 'income' and to show its use only in the sense of receipts which constituted an accretion to capital. So the function of the word 'income 'should be to limit the meaning of the words 'gains' and ‘profits.’" Southern Pacific v. Lowe. Federal Reporter Vol. 238 pg. 850. See also, Walsh v. Brewster. Conn. 1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762..

✦ "I assume that every lawyer will agree with me that we can not legislatively interpret the meaning of the word "income." That is a purely judicial matter... 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 and principal. The Congress can not affect the meaning of the word ‘income’ by any legislation whatsoever..." 1913 Congressional Record, pg. 3843, 3844 Senator Albert B. Cummins.

✦ "Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed income, not compensation." - Conner v. U.S. 303 F Supp. 1187 (1969).

✦ "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." Gov. A.E. Wilson on the Income Tax (16th) Amendment, N.Y. Times, Part 5, Page 13, February 26, 1911.

✦ “Sec. 30 Judicial Definitions of income. By the rule of construction, noscitur a sociis, however, the words in this statute must be construed in

connection with those to which it is joined, namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profit of the taxpayer, not his whole revenue." Roger Foster, A treatise on the Federal Income Tax Under the 556 Act of 1913, 142.

✦ More longstanding decided cases have also made the distinction between wages and income. See Peoples Life Ins. Co. v. United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); Humble Pipe Line Co. v. United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971); Humble Oil & Refining Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971); Stubbs, Overbeck & Associates v. United States, 445 F.2d 1142 (CA5 1971); Royster Co. v. United States, 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F. Supp. 188 (Md. 1967).

Petitioner asks the court to consider; If "gains, profit and income" are synonymous with "wages, salary or compensation for services"... i.e., "wages" equal "income", as Defendants Koskinen/agents claim, then how does Petitioner "derive" any "income" FROM[15] "wages", which is allegedly the same thing?

The ONLY possible way "income" can be "derived from" ("to take or get (something) from (something else)") Petitioner's "wages" is if Petitioner takes what may be left of his wages and invests it or in some other way creates (derives) a "gain or profit" FROM the wages, such as interest or other "gain/profit/increase." There can be no other reasonable way to "derive" "income" from "wages, salary or compensation for service", otherwise, Defendant's Koskinen/agents are claiming that and that all Petitioner's labor is completely free (all profit) to him, and thus, "all" his wages are pure "profit" and "gain", and there are ZERO costs related to the ability to provide labor to make a living.

The costs to be able to make a profit are clearly established for businesses, so to claim there are no "costs" related to Petitioner in providing labor is unreasonable, and the court cases cited, and other counter evidence, clearly

[15] "Gross income includes gains, profits, and income **derived from** salaries, wages, or compensation for personal service..." Section 22 GROSS INCOME: 79 (a); "Gross income and not 'gross receipts' is the foundation of income tax liability... 'gross income' means the total sales, less the cost of goods sold, plus any income (derived-Petitioner) from investments and from incidental or outside operations or sources." *U.S. v. BALLARD*, 535 F2d 400 (1976). (Emphasis added)

establishes this([16]). To suggest otherwise is to create a form of slavery.

"Income" is also "derived from" investment capital, net "gain" from a rental property and other "derived" means for producing "income". Wages, of themselves, are NOT lawful income that can be taxed because working is a right and wages are not "gains and profits" to Petitioner. In addition, Defendants Koskinen/agents cannot call all Petitioner's assets in some account as "income" that would fall under the alleged 16th Amendment authority to tax Petitioner and garnish his entire living due him.

Petitioner has never "derived" income from his wages or other assets which have been taken by Defendants Koskinen/agents. He has never received any 16th Amendment "income", or any "gain or profit" and thus all illegal taking has been fraud on Petitioner by Defendants Koskinen/agents. This is clearly unlawful conversion of something that is NOT "income".

Defendants Koskinen/agents are, thus, forcing Petitioner into a legal category titled "taxpayer" (in contrast to being a "nontaxpayer"([17])), with assessed liability where no mechanism of law or excisable activity([18]) supports such against Petitioner. There is no evidence in fact of record despite ample evidence to the contrary, especially Petitioner being a "nonresident alien"([19]) in regard to

---

[16] "In principle, there can be no difference between the case of selling labor and the case of selling goods." *Adkins v. Children's Hospital*, 261 U.S. at 558. (The sale of one's labor constitutes selling personal property. The IR Code specifically provides that only the amount received in EXCESS of the fair market value of personal property upon its sale constitutes "gain." 26 U.S.C. Sections 1001, et seq.)

[17] "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).

[18] As compared to activity creating a liability clearly defined in Section 5001 - Alcohol; Section 5703 - Tobacco; Section 5801, 5811 and 5821 - Firearms. "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).

[19] "nonresident alien" status of Petitioner is thoroughly substantiated in *Knox v U.S.,* Case No. SA-89-CA-1308 - United States District Court for the Western District of Texas" (Consolidated with SA-89-CA-0761) which Plaintiff customized to his personal status and NOTICED to Defendant Koskinen/agents, and which proves word-smithing and other fraud at its best, and over many decades. (Knox Document available, although being clearly suppressed by others).

such "taxpayer" category.

Petitioner herein is not addressing the relevant issue of there being no actual law that requires Petitioner to actually file,([20]) (which WAS the subject in his previous cases filed) but this evidence is presently (recently discovered) being adjudicated in U.S.A. v. Richard Thomas Grant, United States District Court in Oakland, California, case # 14CR00590-PJH([21]).

Petitioner asks... What part of the above court cites and argument are frivolous?

c. Third Issue: Theoretically, even if Defendants Koskinen/agents could prove that "wages" ARE lawful "income", Defendants Koskinen/agents created fraudulent assessments against Petitioner, claiming that "ALL" Petitioner's assets in his possession, including all business account assets, was actual "income" that can lawfully be assessed upon.

Argument and Authorities: Defendant's Koskinen/agents filed multiple third party summons on Petitioner's private and business interests over the course of several years, (See original amended Brief Exhibits G1-8, - others available), which Petitioner brought to previous courts to demand

---

[20] Petitioner asks the court to consider... if there are actual tax laws that he has violated, as Defendants Koskinen/agents claim, then why have no criminal charges been brought against Petitioner in the last 14 years, when ample charges of "owing" an income tax, and not paying it, have been consistently alleged?

[21] Although this specific issue is not the topic of this appeal, this is merely to show this court more evidence of IRS fraud taking place against Americans under color of law which is being lawfully challenged for cause. In this *U.S. v Grant* case, it will come out that the US lawmakers have NOT written a law that requires the ordinary American to file and pay the Federal Income Tax, but has been presumed on hearsay for many decades. The exposé will be conducted by, 1) Defendant, Richard Thomas Grant, 2) Peymon Mottahedeh, the Founder and President of Freedom Law School (www.LiveFreeNow.Org), and 3) Joseph Banister, former gun carrying Criminal Investigation Division Special Agent of the IRS, (www.FreedomAboveFortune.com), who (while employed, and after two years research), demanded that IRS show him the law that required him to enforce Americans to file and pay the Federal Income Tax, but the IRS and U.S. Government have repeatedly failed to do so, even to the point of harassment and reprisal against those asking questions. There is a $300,000 reward if anyone can prove the three challenges they are making: http://livefreenow.org/300000-income-tax-reward/ - never challenged for years now. Will this court finally demand proof of claims by Defendants Koskinen/agents and end these questions, once and for all?

Petitioner would also point the court to recently reported allegations against Defendant Koskinen for perjury, falsification of records, and destruction of records, and there is movement toward impeachment proceedings in Congress. Innocent until proven guilty, yes, (unlike in Petitioner's case...) but more prima facie evidence that something is seriously wrong with this alleged agency and its actions against Americans which needs to be exposed.

validation from Defendants Koskinen/agents, but without any evidence placed into the record by Defendants Koskinen/agents. Defendants concocted an "assessment", apparently calling ALL business expenses of record, and ALL business deposits and receipts over the course of the years of 2003-2006, as "income", but neglecting ANY outgoing expenses in the same records, which amounted to the vast majority of all assets.

Defendant's Koskinen/agents arbitrarily and capriciously made an assessment on ALL assets of Petitioner as taxable "income", with no distinguishment between lawful "income" and all assets Petitioner possesses, even despite their own code providing for deductions on business and other expenses, which they conveniently and fraudulently ignored in Petitioner's case.

These levies are in violation of clear standing laws, severely damaging Petitioner in multiple ways. Defendant's Koskinen/agents allegedly have the actual records (which were NOT provided to Petitioner) that they utilized to assess and attack his assets. They do not show lawful "income" or what they claim is "income" that they can assess.

d. Fourth Issue: Based on the presumptions and actions explained above, Defendants Vencato and Murphy, under the authority of Koskinen, unlawfully created fraudulent "Notices of Levy" which were contrary to standing code regulations and were misleading recipients of lawful authority to directly levy Petitioner.

Argument and Authorities: Defendants Vencato, Murphy and Sothen in what appears to be a vindictive and malicious move against Petitioner, (encouraged by "getting away with it" and by previous Court's lack of adjudication of the evidence of record), filed fraudulent Notices of Levy, in complete disregard for their own IR Code (See Amended Brief Exhibits D 1-8) for the filing of any lawful Levy.

Most importantly in Petitioner's case, alleged "lawful" Notices of Levy have fraudulently not disclosed a relevant section of IR Code which is the authority to Levy directly, apparently without warrant and demand, but is NOT disclosed to banks and other institutions. (See Amended Brief Exhibit D, P.4, #3 & Exhibit D8).

The section purposefully left off this Notice of Levy regarding Petitioner is IRC

6331 - Levy and distraint, Section A,([22]). It, of course, clearly states "who" can be directly levied and upon "what". Levy is upon "accrued salary or wages of any officer, employee or elected official, of the United States..." and Petitioner is not any of these, nor was his "accrued salary or wages" the target of the unlawful levy and taking by Defendants Koskinen/agents.

Direct levy does NOT apply to Petitioner and no levy can be applied without "Warrants of Distraint" and "Notice and Demand" which are not of record with levies in Petitioner's case as proven required in Amended Brief Exhibits D 1-7. The Defendants Koskinen/agents want this court to ignore the history of levy and lien actions. Certainly the Defendants Koskinen/agents/IRS cannot be allowed to benefit from wrongdoing because its "administrative practice" has been to mislead courts and ignore the legislative history expressing intent to retain the existing distraint procedures which required warrants, not to mention valid proof of alleged debt and lawful "income".

A recent GAO (Government Accountability Office) report([23]) indicated that the GAO was unable to determine whether the IRS was routinely using lawful enforcement practices or not. Now we know the Defendants Koskinen/agents/ IRS, have not, at least in Petitioner's case, if not elsewhere.

What part of the above court cites and statutes and code are frivolous?

e. Fifth Issue: Defendant's Koskinen/agents, via fraudulent

---

[22] IRC 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**. 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. (Emphasis added).

[23] "...we (1) asked IRS to provide us with available basic statistics on its use, and misuse, of lien, Levy and seizure authority from 1993 to 1996;...while IRS has some limited data about its use, and misuse, of collection enforcement authorities, these data are not sufficient to show (1) the extent of the improper use of lien, Levy, or seizure authority; (2) the causes of the improper actions; or (3) the characteristics of taxpayers affected by improper actions." From GAOT97-155.html, September 23, 1997.

Notices of Levy, attacked the entirety of Petitioner's living from all sources, despite lawful protections against this.

Argument and Authorities: Defendant's Koskinen/agents, in a series of calculated and vindictive, frantic and erratic moves against Petitioner;

1) At least twice sent notice of levy for ALL his Veteran's Disability Compensation against standing code and other laws,

2) Levied his entire Social Security assets apart from standing law, (will be almost $3,500 as of July 1st),

3) Twice attacked all his business assets which weren't even Petitioner's assets but were customer payments for customer's products as yet paid for or delivered, or vendor expenses, and certainly could not be considered taxable "income" they had any right to.

Veteran's Disability Compensation Authorities:

The Veterans Disability Act of 2010 is a Federal law which exempts VA disability from withholding of any sort. Existing code, USC, Title 38, §5301, already protected VA disability from withholding, but this provision was reiterated and included in the newer legislation of 2010.

In addition, "26 U.S. C. § 6334" states clearly... "Property exempt from levy section; (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
(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

Petitioner certainly fits into this lawful category. (See amended Brief, Exhibit B4, and M).

Continuing with authorities...

Seventy Fourth Congress Chapter 510; An Act- To safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement and insurance, and other purposes. Section 3.

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a

> beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or any legal or equitable process whatever, either before or after receipt by the beneficiary." Approved August 12, 1935.

It should also be noted that under the Taxpayer Relief Act (Public Law 105-34), section 1024 regarding levy actions...

> (h) Continuing Levy on Certain Payments.--
> (2) Specified payment.--For the purposes of paragraph (1), the term 'specified payment' means--
> (B) any payment described in paragraph (4), (7), (9), or (11) of section 6334(a)...

This section which specifically states what types of property that CAN be levied, (up to 15% - see below), also specifically EXCLUDES section (10) of 26 USC § 6334 as something that can be levied. Despite this protection, Defendants Koskinen/agents and Wells Fargo Bank still attacked these funds, although not via "Continuing Levy" as with Petitioner's social security, showing prima facie evidence they had knew of this protection and yet disregarded it and egregiously attacked Petitioner.

Social Security Retirement attack discussion and Authorities:

The following shows an inconsistent and erratic attack on Petitioner's Social Security (SS) assets. As described in original amended Brief, Defendant's Koskinen/agents first proceeded to garnish social security funds via his account with First Southwest Bank in Pagosa Springs, Colorado. This included the taking of ONLY $15.88 out of his entire $697 SS payment. (See amended Brief Exhibit F 2-3). Petitioner challenged the bank in this taking and the bank returned the $15.88 and closed the account, and returned all the rest of Petitioner's Social Security funds via check.

Petitioner then used an account with Citizens Bank of Pagosa for his social security, where his mother's social security account was, and on which he is named to assist her in her finances. At the same time period, Defendant's Koskinen/agents attempted levy of Petitioner's mother's social security funds, which the bank official notified us of. The bank official determined that there could be NO levy of the funds in this account, and filed the allegedly required paperwork (See amended Brief Exhibit F-1) showing the well-known two month fund limit. This shows even more arbitrary and capricious actions by

Defendants.

Petitioner's SS was at this same time deposited to his Citizens Bank account (See Amended Brief, Exhibit B 5) but Defendant's Koskinen/agents bypassed the bank account and existing SS funds in it and sent NO Notice of Levy to the bank (since the bank already demonstrated it was protecting said funds), and went directly to Defendant Colvin/Social Security Administration to garnish his total social security monthly amount, which Colvin, or unknown agent acting under Colvin, is presently continuing to assist with. (See Amended Brief, Exhibit A 1-2, noting the presumption accepted by Wells Fargo on "because you own them money" with no evidence of this).

Further Authority in defense of taking:

Taxpayer Relief Act (Public Law 105-34) Section 1024,

(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 continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer." (Emphasis added).

It must be noted that the title states "Continuous Levy 'ON' Certain Payments" which does not authorize the "continuous" levy of ALL the SS payment, and no law Petitioner can locate is of record authorizing such a 100% complete taking. In fact, Petitioner is awaiting documents from the SA Administration proving another man similarly situated as Petitioner with regard to IRS garnishment that has ONLY 15% of his Social Security garnished as the law states is proper where such levy is lawfully proven. Why is Petitioner maliciously being treated with bias outside the same laws which protect others?

Taxpayer Relief Act (Public Law 105-34) Section 1024 addresses what funds CAN be lawfully "continuously levied" but does NOT include Social Security retirement funds. If Section 1024 does NOT pertain to Petitioner's Social Security "Old-Age" retirement payments, then by what law can Koskinen/agents use to justify authority to garnish the entirety of Petitioner's social security payments especially outside due process, and by what laws can Colvin stand on to accomplice said taking of funds?

Further authority:

> Title 42, 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." (Emphasis added).

Part-time Business account;

> Business account records are with Credit Card processor PayPal and documentation of Levy amounts and times have not been available to Petitioner via his account. He has requested said documentation, but PayPal has not responded to date, but would be available if subpoenaed, and only by mail.([24]) As stated previously, said funds were NOT lawful "income" and were business assets yet to be paid to vendors and for customer order processing, damaging Petitioner's small, part-time online business.

It also must be noted that Petitioner challenged PayPal Business on the legality of their compliance with said Levy, having taken all business assets out and closing the account on a Friday, and noticed to Petitioner on the same day. Petitioner provided challenge documentation with proof of laws that same Friday, and PayPal, the following Monday, reopened the account and returned all funds to it. Petitioner suspects this "refund" was from PayPal's own assets to prevent a lawsuit against PayPal, and NOT because they challenged Defendant's Koskinen/agents rights to be acting against Petitioner. The funds were likely still received by Defendant's Koskinen/agents.

Defendant's Koskinen/agents cannot claim that these assets were lawful "income" that could be taxed, and certainly had no authority to take customer's monies for any reason.

This whole process has obviously left Petitioner in a serious position financially,

---

[24] Paypal Corp., ATTN; Legal-Civil, 2211 N. 1st St., San Jose, CA 95131. Petitioner is attempting to obtain these records as well, which may be provided at a later date.

having to pay monthly debts, and caring for and supporting his disabled mother previously living with him. Petitioner and family had to relocate her to family out of state in Georgia, for health and financial reasons, and Petitioner will also likely have to relocate to some as yet undetermined location due to financial depravation and being unable to maintain his present meager situation. This cannot be sustained as such, and this egregious action must be corrected or continuing irreparable damages to Petitioner will continue.

What part of the above court cites, law and statutes are frivolous?

f. Sixth Issue: Defendants Colvin/SSA and Wells Fargo Bank both colluded with Defendant's Koskinen/agents in violating their fiduciary duty to Petitioner to protect his assets from unlawful garnishment under standing laws as provided above.

Argument and Authorities: Defendants Colvin/SSA and Wells Fargo Bank received "Notice of Levy" and promptly acted without any evidence that such a levy was valid, or based on any court judgment or lawful adjudication, and in violation of standing laws they knew or should have known existed, as described above.

Wells Fargo Bank was (at least) twice noticed of the standing laws protecting Petitioner's service-related Veterans Disability Compensation, (See Exhibits WF 1-2) and they ignored them and provided no answer to Petitioner on his lawful challenge, and cooperated nevertheless with Defendant's Koskinen/agents. Despite minimal assets in the account at the time of levies, (by chance due to credit card fraud) Petitioner suffered financial damages for fees and what was in the account at one time, and has had to continually monitor the account and attempt to retrieve deposited disability compensation each month prior to any expected levy to be filed with Wells Fargo, a stressful ordeal to say the least.

In addition, both Defendants did not provide or have supporting positive law requiring either Defendant to comply with Defendant's Koskinen/agents Notice of Levy, and complied ONLY with administrative laws based on hearsay and presumption which violated Petitioner's due process 5th Amendment rights.

What part of Petitioner's 5th Amendment right to due process is frivolous?

g. Seventh Issue: Recently discovered evidence (raised in original amended brief) raises serious questions regarding the lawful status of the "Internal Revenue Service" and exactly what agency it is working for

or as, which surely begs some sort of response and explanation by Defendant's Koskinen/agents.

Argument and Authorities: Several documents, including a court case (Diversified Metal Products v T-Bow Company - See amended Brief, Exhibit S, (better copy attached) and amended Brief Exhibit N-3) raise further issues of authority of the Defendant's Koskinen/agents, allegedly employed by the "Internal Revenue Service", to be acting against Petitioner.

Amended Brief Exhibits N 1-2 from the Treasury Department's own website([25]) shows two Treasury Orders, 150-02 and 150-06, showing the name and functions of "Internal Revenue Service" were "canceled" in 2005.

The obvious question Petitioner and the Court should be asking is, "what exactly is the "Internal Revenue Service" and by what agency or authority is it acting since 2005?" If the agency itself denies being an agency of the U.S. government, what else could it be? What is its legal name, and by what mechanism of law is it acting against Petitioner and his assets claiming to be representing the U.S. Government?

What part of the Treasury Orders named above, and the Diversified court case, are frivolous?

[25] https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to150-02.aspx, and https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to150-06.aspx

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

The above authorities prove that Defendant's have acted outside lawful parameters against Petitioner, and the court did not apply the proper existing laws and cited cases, or provided any evidence of lawful authority of Defendant's Koskinen/agents to act contrary to U.S. Supreme Court precedent which is binding on the IRS. Petitioner simply wants evidence in fact for all actions performed, rather than mere presumption and hearsay being the evidence provided.

5. Did the district court incorrectly decide the facts? If so, what facts?

Yes. Essentially the court didn't decide any facts. The court ignored the cited authorities and laws, ignored the evidence and claim, and called it all "frivolous", and had NO evidence in fact before it, either from Defendants, or from the court itself, to label all cited authorities as "frivolous."

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

Petitioner filed an original Motion for Emergency Injunction, which was denied on grounds which favored Defendants and maintained harm to Petitioner. Petitioner also filed motion for recusal based on the appearance of bias and prejudice against defending himself against unlawful taking in denying the case to proceed on its obvious merits. Claims for relief were clearly stated. The ability to live and function has been severely hampered by all Defendants which the court ignored, despite clear laws in support of Petitioner.

The mere fact that Defendant's Koskinen/agents have provided no evidence of record to justify jurisdiction and authority over Petitioner, and ignored standing statutes and case precedent should alert this court to problems with the alleged lawful procedure.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

Yes! The actual issues at hand have never been properly adjudicated in ANY court in America, EVER. The actual cases routinely cited by Defendants Koskinen/agents, or other court cites, calling Petitioner's claims as "frivolous" have never had the actual evidence before the courts, and thus the cases could not properly label Petitioner's arguments as "frivolous". In addition,

Petitioner's cited cases are binding on Defendants Koskinen/agents actions, and such cases cannot be used by Defendants Koskinen/agents since all past cases apply ONLY to that particular case and NOT to Petitioner's arguments and evidence...

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).

If lower court cases cannot be used "against" the Defendants Koskinen/agents, and used only "for the taxpayer and years litigated," then certainly such cases cannot be used against Petitioner, and only evidence provided herein can be adjudicated in his case. The number of U.S. Supreme Court cases cited, and their clear lack of ambiguity, and their precise definition of "income" is certainly foundation upon which Petitioner has greatly relied upon in his defense, and which have never been rebutted;

"No one should be punished unnecessarily for relying upon the decisions of the U.S. Supreme Court." U.S. v. Mason, 412 U.S. 391, 399-400 (1973).

In the same way, the standing statutes and Code protecting Petitioner are clear, thus, the District Court's claims of "frivolous", without ANY independent Findings of Fact and Conclusions of Law, are without merit. Certainly the avoidance of clear laws cited which are not frivolous laws is continuing harm to Petitioner. The Judge and Defendants Koskinen/agents are required to properly apply laws in evidence,

or they are acting outside their official([26]) capacities.

8. What action do you want this court to take in your case?

All the issues raised in the District Court amended Brief and herein should be answered by the Defendants Koskinen/agents rather than allowing hearsay and presumption under color of law to prevail. The District Court denied even requiring Defendants to respond to the clear evidence presented, and Petitioner's due process rights were denied. Surely Defendants can answer the clear, simple questions with evidence in fact, if there is such evidence in existence. Why haven't they answered despite repeated requests which they are required to answer under IR regulations of record? (See Amended Brief, Exhibit E 1-3).

Petitioner points the court to the original Amended Brief that fleshes out these issues in more detail, but would ask the court to reverse, and to ORDER all Defendants to reply to the relevant charges and evidence, and provide remedy as stated in the amended Brief, for the sake of justice and due process, and for violations of Petitioner's rights under law. Or if the case must be remanded back to District Court (to other than Babcock) for proper adjudication, to so ORDER.

This is the court's chance to make the first lawful stand to force the Defendants Koskinen/agents to finally have to answer the simple questions and obvious conflicts at hand. Some court WILL do this sooner or later as this continues to become public knowledge. Why not be the first?

9. Do you think the court should hear oral argument in this case? If so, why?

If the Court has its own questions which are not addressed herein or in the previous documents, or wants more clarification, or even more evidence in support of Petitioner's defense, (amicus briefs, and other documents in support, or expert witnesses available) then oral arguments might be in order. The mere fact that no answers have ever been provided to the evidence presented stands as prima facie evidence that such evidence does not exist and Defendants are acting outside of

---

[26] Title 42 U.S.C. Sec. 1983. When lawsuits are brought against federal officials, they must be brought against them in their 'individual' capacity not their official capacity. When federal officials perpetrate constitutional torts, they do so ultra vires (beyond the powers) and lose the shield of immunity. See also *Redfield v Fisher*, 292 P 813, at 819 [1930]; "...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.

lawful authority under color of law against Petitioner, and he moves for remedy and recompense posthaste.

Respectfully submitted,

_____ _____

Date Signature

CERTIFICATE OF SERVICE

I hereby certify that on _____ I served a copy of the Appellant/Petitioner's Opening Brief and Entry of Appearance, by United States Postal Mail, to the below named Defendants, at the last known and available addresses listed.

1. Julie Avetta, counsel for John Koskinen, Commissioner of Internal revenue, Appellate Section, P.O. Box 502, N.W., Washington, D.C. 20044.

2. John Vencato, Revenue Agent, 301 S. Howes St., Fort Collins, Colorado 80521.

3. Ginger L. Wray, Revenue Officer, 12600 W. Colfax Ave., C-300, Lakewood, Colorado 80215.

4. Jeremy Woods, Disclosure Specialist, Disclosure Office 9, Stop 93A, P.O. Box 621506, Atlanta, GA 30362 (Only address available).

5. Sharisse Tompkins, Disclosure Manager, Disclosure Office 9, Stop 93A, P.O. Box 621506, Atlanta, GA 30362 (Only address available).

6. Theresa Gates, Program Manager, Disclosure Office 9, Stop 93A, P.O. Box 621506, Atlanta, GA 30362 (Only address available).

7. Gary Murphy, Revenue agent, 100 E. B St., Room. 120, Casper, WY 82601.

8. William Sothen, Revenue agent, 103 Shepphard Drive, Durango, CO 81301.

9. Carolyn Colvin, SSA Acting Administrator, Office of Public Inquiries, 6401 Security Blvd., Baltimore, MD 21235.

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

_____ _____

Date Signature

CERTIFICATE OF COMPLIANCE

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

_____ _____

Date Signature

Wells Fargo Bank
c/o Brown, Berardini & Dunning
2000 S. Colorado Blvd., Exhibit WF 1
Tower 2, Suite 700
Denver, Colorado 80222
Fax: 877-399-7261

UNLAWFUL FUNDS REMOVAL

I received letter notice from Wells Fargo Bank (WFB) of an alleged "legal order" and am responding. The letter states that no funds were withdrawn. (See Exhibit A). I received a second letter then stating that $125 "processing fee" was withdrawn from my VA disability account, for the claimed "legal order". (See exhibit B). There were no funds withdrawn, as WFB stated, but yet I'm being charged $125 for this non-action?

WFB has deducted these funds in response to an unlawful "Notice of Levy" as clearly explained in previous documentation. I have provided WFB with ample evidence and NOTICE of the illegal "Notice of Levy" actions by the IRS.

WFB also states the alleged legal order "requires us by law to deduct money..." from my account. I am demanding proof of the law which requires WFB to deduct funds, i. e, court order, judgement, or other alleged legal process and law which places a legal demand on WFB to be acting as accountants for the IRS. The violation of law is not just with the IRS agents, but with WFB in releasing funds without lawful authorization, making WFB liable for these lost assets, plus damages.

I am also demanding a copy of the alleged "legal order" with evidence making it an actual legal order as compared to an administrative action under color of law.

I have filed further documents with the Appeal's court on this recent unlawful IRS action and WFB's complicity in the ongoing fraud. If necessary, I will be filing a new suit with the District Court naming WFB, among several IRS agents, in this illegal and unconstitutional activity.

I am also demanding the $125 disability money be returned to my account, as this is a big hit which hampers me from my meeting my daily needs. The costs in legal fees, and reputation, will far outweigh what WFB has stolen.

The principle of law and personal rights guaranteed by the U.S. and Colorado constitutions is what this issue is about. I'm sorry WFB sees fit to ignore these laws and continue its bad faith actions with NO evidence of lawful authority to support its position. WFB has had clear opportunity to request validation from the IRS, but has failed to do so. This will be brought up before a jury in court for them to decide the ethics and truth of these actions.

Jeffrey T. Maehr
924 E. Stollsteimer Rd
Pagosa Springs, Colorado 81147

CC: Rep. J.Paul Brown;
Congressman Scott Tipton

Wells Fargo Bank
50 Harman Park Drive Exhibit WF 2
Pagosa Springs, Colorado 81147

March 1, 2016 CONSTRUCTIVE NOTICE
NOTICE TO AGENT IS NOTICE TO PRINCIPAL
NOTICE TO PRINCIPAL IS NOTICE TO AGENT

To Whom it may concern,

I am writing regarding the (at least) two recent attempts by the IRS to Levy funds from my Veterans Disability Compensation account using a fraudulent Levy mechanism. WFB was NOTICED on this January, yet appears to be engaged in willful violation of the law.

Some funds were removed the first time, but there were no funds in the account the second time, so WFB had nothing to deliver to the IRS. However, I was charged $125 "bank fee" for responding to this illegal levy. This attempted release of funds makes WFB liable for all funds NOT PROPERLY SUBJECT TO LEVY, including the "service fee" which should not have been applied to a fraudulent Levy in the first place.

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).

My Veterans Disability check is automatically deposited into my account. This money is NOT lawfully subject to any form of taking by ANY agency or party.

The Veterans Disability Act of 2010 is a Federal law which exempts VA disability from withholding of any sort. Actually, existing code USC, Title 38, §5301 already protected VA disability from withholding, but this provision was re-iterated and included in the newer legislation of 2010.

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

My disability is service-connected, (See VA Card copy attached). I am requesting that the $125 be returned to my account, and that no further compliance with the IRS' fraudulent levy

action be considered based on the laws sited herein.

In addition, no due process of law has occurred regarding this Levy action, with no court judgement or Distraint. If WFB continues in this vein, I will be forced to add WFB to a suit already recently filed in Federal District Court against the IRS and other entities.

_____

Jeffrey T. Maehr
924 E. Stollsteimer Rd.,
Pagosa Springs, Colorado 81147
970-731-9724

United States Attorney
United States Attorney's Office
Box 32
Boise, Idaho 83707
Telephone: (208) 334-1211

RICHARD R. WARD
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-5867

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF IDAHO

DIVERSIFIED METAL PRODUCTS, INC., Plaintiff, v. T-BOW COMPANY TRUST, INTERNAL REVENUE SERVICE, and STEVE MORGAN, Defendants.	Civil No. 93-405-E-EJL UNITED STATES' ANSWER AND CLAIM

The United States of America, through undersigned counsel hereby responds to the numbered paragraphs of plaintiff's complaint as follows:

1. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and, on that basis, denies the allegations.

2. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and, on that basis, denies the allegations.

3. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and, on that basis, denies the allegations.

4. Denies that the Internal Revenue Service is an agency of the United States Government but admits that the United States of America would be a proper party to this action. Admits that the IRS has served a Notice of Levy on plaintiff for funds owed to defendant Steve Morgan.

5. Admits that the IRS has made a demand on plaintiff for payment of funds owed to Steve Morgan. The United States is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations, and, on that basis, denies the remaining allegations.

6. Admits that Exhibits A and B are attached and are respectively, a copy of a letter from Lonnie Crockett and a copy of a Notice of Levy served by the IRS.

7. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and, on that basis, denies the allegations.