

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
JUN 19 2018
SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

John J Schlabach,

Plaintiff,

v.

Internal Revenue Service and its agents,

Defendant.

CASE NO. 2:18-cv-00053-SMJ

**MOTION FOR ENTRY
OF DEFAULT FINAL JUDGMENT**


The undersigned plaintiff moves this Court for entry of a default judgment as to defendant Internal Revenue Service and its agents upon the complaint heretofore filed and served upon the defendant, in accordance with the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure, and in support thereof shows the Court the following.

1. On February 13, 2018, the Plaintiff filed in the United States District Court, Eastern District of Washington, a Complaint alleging certain actions and a denial of refund claim by defendant in. A copy of said Complaint is attached hereto as Exhibit 1 and is incorporated herein by reference.
2. On February 21, 2018, a copy of said Complaint and a Summons in a Civil Action were served the defendant, and on February 23, 2018 on the defendant(s) attorney, United States Attorney General at their place of business located in Washington DC. A copy of the Process Receipt and Return and Summons is attached hereto as Exhibit 2 and is incorporated herein by reference.
3. On April 13, 2018, after more than sixty days, excluding Presidents day had elapsed since the service of said Complaint and Summons upon defendant, and no Answer thereto having been

Any attempts to comply with the statutes and case law are not a frivolous action and therefore the plaintiff would have prevailed on the merits of the case. Plaintiff is entitled to a refund and abatement of all penalties unlawfully assessed.

Submitted as true and correct to the best of my knowledge and belief.

Dated this 18 day of June 2018.



John Schlabach, American national

EXHIBIT 1

United States District Court
Eastern District of Washington

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EASTERN DISTRICT OF WASHINGTON

FEB 13 2018

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

Jurisdiction and Venue

This is a complaint for refund of taxes or penalties paid under protest and after a claim for refund under 26 U.S.C. § 6702, et al.

The Court has jurisdiction pursuant to 26 U.S.C. § 6703(c)(2). Further the United States or one of its agencies are a defendant, 28 U.S.C § 1391.

Parties

John Schlabach
PO Box 362
Mead, Washington 99021
509-953-1060 johnjsch@gmail.com

Case No. **2:18-cv-00053-SMJ**

V.

Internal Revenue Service and its agents.
Frivolous Return Program Stop 4450
Ogden Utah, 84201-0021

**Statement of the Case
Background**

Plaintiff Schlabach has converted all his received paychecks into lawful money of the United States ("U.S. Notes"), pursuant to the provisions of 12 U.S.C. § 411. Schlabach's process is to stamp "*Redeemed in Lawful Money pursuant to 12 U.S.C. § 411*" on the endorsement line of each of his paychecks to assert his demand made to the Federal Reserve Bank where his checks are cashed and/or deposited.

12 U.S. Code § 411 - *Issuance to reserve banks; nature of obligation; redemption*
Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the

1 *Treasury Department of the United States, in the city of Washington, District of*
 2 *Columbia, or at any Federal Reserve Bank.* (Dec. 23, 1913, ch. 6, § 16 (par.), 38 Stat. 265;
 3 Jan. 30, 1934, ch. 6, § 2(b)(1), 48 Stat. 337; Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704.

4 It is an undisputed fact that Federal Reserve Notes may be redeemed in lawful money,
 5 "US Notes", see: *Milam v. United States*, 524 F. 2d 629 - Court of Appeals, 9th Circuit
 6 1974; "Appellant is entitled to redeem his note, but not in precious metal." "*United*
 7 *States v. Thomas*, 319 F. 3d 640 - Court of Appeals, 3rd Circuit 2003; Currency,
 8 however, differs substantially from such objects. Paper currency, in the form of the
 Federal Reserve Note, is defined as an "obligation of the United States" that may be
 "redeemed in lawful money on demand." 12 U.S.C. § 411".

9 Schlabach's intention is to follow the precise strictures of the statute by making his good
 10 faith demand at each interaction with the Federal Reserve Bank. 12 USC § 95a, part 2
 11 provides that: "*no person shall be held liable in any court for or in respect to anything*
 12 *done or omitted in good faith in connection with the administration of, or in pursuance of*
 13 *and in reliance on, this section, or any rule, regulation, instruction, or direction issued*
hereunder."

14 Federal Reserve Notes are an elastic currency, whereas U.S. Notes are legally limited
 15 to only \$300,000,000.00 in reserve or circulation. See: 31 § U.S.C. 51 (b)(1).
 16 Schlabach considers his pay to be tendered to him in US notes, that is not in reserve
 17 currency but in the physical form of Federal Reserve notes. On January 21, 1971 the
 Treasury chose to quit putting more US notes into circulation because Federal Reserve
 18 notes function adequately in all respects like US notes which are in all respects –
 19 *Juilliard v. Greenman* 110 US 421 – like Federal Reserve notes. See "Treasury Faqs"
 webpage – "Legal Tender Status":

20 *United States notes serve no function that is not already adequately served by Federal*
 21 *Reserve notes. As a result, the Treasury Department stopped issuing United States*
 22 *notes, and none have been placed into circulation since January 21, 1971.*

23 Supreme Court stated in; in *Veasie v. Fenno*, 75 US 533, "*United States Notes,*
 24 *obviously, cannot be the subject of a tax.*" See also, *McCulloch v. Maryland*, 17 U.S.
 25 316.

26 Refund is Appropriate

27 After a claim is filed and rejected the courts have jurisdiction and no collection action
 28 shall be taken until the court has adjudicated the claim. *Noske v. US*, 911 F. 2d 133 - Court of
 Appeals, 8th Circuit 1990 A taxpayer assessed with a § 6700 penalty may stop collection
 proceedings by paying at least 15% of the penalty and filing an agency claim for refund of
 the amount paid. 26 U.S.C. § 6703(c)(1). Within 30 days after the denial of the claim for
 refund "of any partial payment of any penalty under section 6700," or within 30 days after six
 months of agency inaction, the taxpayer may bring a lawsuit in federal district court to

1 determine liability for the penalty. 26 U.S.C. § 6703(c)(2).

2 The claim for refund was filed in June 2017, denied and the reconsideration was also
3 denied January 2018, therefore this court has jurisdiction.

4 Federal courts have jurisdiction to hear refund claims; *White v. US*, 250 F. Supp. 2d
5 919 - Dist. Court, MD Tennessee 2003 In a frivolous return penalty case, jurisdiction lies
6 with the district court, rather than the tax court. "[U]nder section 6703 [the tax court]
lack[s] jurisdiction to review assessments of section 6702 frivolous return penalties"

7 Facts

8 On or about April 3, 2014 Schlabach filed a return statement under penalty of perjury for
9 the year 2013.

10 Sometime after July 2, 2015 the IRS issued a frivolous penalty in the amount of
11 \$5000.00 for an alleged frivolous filing.

12 On or about November 26, 2016 Schlabach received from the IRS a notice of penalty,
13 charging another \$5000.00 penalty for an alleged frivolous filing.

14 On or about November 26, 2016 Schlabach sent a letter to the IRS in response to the
15 penalty requesting the documents or filings that caused the frivolous penalties, which
now totaled \$10000.00. see EXHIBIT A To this day no reply or document(s).

16 On or about November 26, 2016 Schlabach sent a letter to the IRS requesting the
17 documentation that fell within the Secretary's determination entitled: "THE TRUTH
18 ABOUT FRIVOLOUS TAX ARGUMENTS, March 2014" and "Revenue Ruling 4-26-2010
19 Notice 2010-33". See: EXHIBIT B.

20 26 USC 6702(b)(2) states that a penalty under said section must be a position identified
21 by the Secretary. Schlabach is entitled to know and understand which of the
Secretary's frivolous positions he is being penalized under.

22 On or about May 1, 2017 the IRS applied the refund from 2015 in the amount of
23 \$1730.87 to the frivolous penalty balance for 2013.

24 On or about May 15, 2017 the IRS applied the refund from 2016 in the amount of
25 \$8724.68 to the frivolous penalty balance for 2013.

26 On or about June 10, 2017 Schlabach filed a claim for refund with the IRS for the
27 \$10000.00 in alleged penalties that were paid, plus interest, for a total of \$10324.69.

28 On or about November 10, 2017 Schlabach received a letter from the IRS dated
November 13, 2017 denying his claim.

1 On or about November 25, 2017 Schlabach sent a letter to the IRS requesting the
2 reason(s) and for the documents that were determined as frivolous, including a
3 notification of the court(s) ruling that the burden is on the IRS

4 The November 25, 2017 letter informed the IRS that the next step would be filing a
5 complaint with the federal district court. See: EXHIBIT A

6 Refund requests for 2008, 2009 and 2010 have been ignored or declined and 6 months
7 have passed. Total amounts for these years \$12074.46. Penalties have been either
8 threatened or issued for these years also. All for the same reason as noted above.

9 ***United States v. Williams 514 US 527 – Supreme Court 1995*** sets out this process;
10 The jurisdiction conferred by § 1346(a)(1) is limited by 26 U. S. C. § 7422(a). Like §
11 1346(a)(1), § 7422(a) contains no language limiting a refund suit to the "taxpayer," but
12 its "express language . . . conditions a district court's authority to hear a refund suit."

13 [and] Title 26 U. S. C. § 6532(a), which imposes a period of limitations on suits for
14 refunds in court and is entitled "Suits by *taxpayers* for refund," states that "[n]o suit or
15 proceeding under section 7422(a) . . . shall be begun before the expiration of 6 months
16 from the date of filing the claim required under such section . . . , nor after the expiration
17 of 2 years from the date of mailing by certified mail or registered mail by the Secretary
18 to the *taxpayer* of a notice of the disallowance".

19 ***United States v. Williams, Supra***, quoting; ***Philadelphia v. Collector, 5 Wall. 720,***
20 ***731-732 (1867)*** ("Where the party voluntarily pays the money, he is without remedy; but
21 if he pays it by compulsion of law, or under protest, or with notice that he intends to
22 bring suit to test the validity of the claim, he may recover it back . . .").

23 On December 4, 2017, Schlabach received a notice penalty in the amount of \$5000.00
24 each year for years 2009, 2010 and 2012.

25 ON December 11, 2017 Schlabach sent a letter requesting the document that was filed
26 that was frivolous and how it related to the Secretary of the Treasury determinations.
27 See: EXHIBIT C

28 To date the IRS never provided any such documentation and apparently believes they
are not required to comply with their own rules pursuant to publication one.

On December 4, 2017, Schlabach filed a FOIA via fax to the IRS requesting the
documentation and determination of how any filing he had made were frivolous.

On January 21, 2018 Schlabach received a response to his FOIA request of December
4, 2017. These response records showed an agent identified only as "B" made a
determination that the documents plaintiff filed were subject to a penalty pursuant to the
secretary determination coded as "argument code 30."

Pursuant to the IRS documentation and determination at https://www.irs.gov/irm/part25/irm_25-025-010 the "argument code 30" is defined as "ARG 30 - Non-negotiable Chargeback (NNCB)". EXHIBIT D

In searching all the filed documents there is no such filing, or even a reference to such a notation.

The IRS and its agent "B" is believed to have deliberately assigned an inapplicable argument code to allow for the continuous issuance of a \$5000.00 penalty – even when Schlabach is simply asking for the IRS's assistance in understanding and/or resolving this issue.

On or about January 2, 2018, Schlabach sent a letter to the Inspector General requesting assistance, as the IRS appeared to be ignoring any requests to comply with providing any supporting documentation that was alleged as frivolous. See: EXHIBIT E

On or about February 3, 2018 Schlabach received a reply to his request for reconsideration letter, on the request for a refund of the penalty for the year 2013, denying the reconsideration and still refusing to provide any documentation that indicated what was filed that was determined to be frivolous.

In **Mattingly v. United States**, 924 F.2d 785 (8th Cir. 1991) ¶ 31, the court ruled: "We find the reasoning of Mitchell more persuasive and hold that in actions brought under § 6701 the burden of proof is on the government by a preponderance of the evidence. This holding is based on our view of the statutory language, the integrated enactment of §§ 6700-03 and the overall structure of the civil tax penalty provisions."

NOTE: On April 5, 1933, the **physical possession** and **legal title** to **lawful money** (gold) was taken from the people. But the people had to retain the **equitable title** to this lawful money or else it would have amounted to theft, and Congressman Louis Thomas McFadden's charges of theft and treason on May 23, 1933 lodged with the Judiciary would have required prosecution. These charges were mitigated by the passing of HJR 192 on June 5, 1933 which provided for the possibility of "discharge upon payment" of all obligations. This remedy was subtly effected by two United States Codes: 1) **12 USC 411** which provides access to this lawful money "**upon demand**", and 2) **12 USC 95a(2)** which assures "**full discharge**" of all obligations upon assignment or transfer of payments to the United States.

Summary

Plaintiff has acted within the provision of the Supreme Court and the statutes.

The Supreme Court ruled that US Notes are not the subject of a tax.

12 USC section 411, as part of the Federal Reserve Act, provides for the redemption of Federal Reserve Notes in lawful money (US Notes).

1 US Notes are not taxable, **Veasie v Fanno**, Supra.

2 12 USC 95a part 2; states there can be no penalty for attempting to comply with the 12
3 USC Title and sections thereunder.

4 A good faith reliance on the courts and statutes at large is not a frivolous position.

5 The IRS and its agents are in violation of section 12 USC §95a part 2. The court must
6 determine the punishment for this violation.

7 Even if Schlabach has a good faith misunderstanding of the court ruling and statutes at
8 large, this alone cannot be considered a frivolous argument, especially if there is no
9 precedence.

10 There is no precedence, other than the court cases and statutes at large regarding
11 redemption, for how to report the redemption of Federal Reserve Notes in Lawful
12 Money and how this effects the tax liability.

13 Schlabach has made every attempt to comply with the provisions of the court rulings
14 and the statutes.

15 Every attempt by Schlabach to understand what the IRS or its agents were referring to
16 was ignored and additional penalties threatened.

17 The actions of the IRS or its agents are egregious and clearly violate due process.

18 Taxpayers have a clear right to understand the tax laws and how they apply to them.

19 Wherefore; Schlabach moves this court to;
20

21 Restrain the IRS and its agents from any additional penalties until this court makes its
22 determination whether any documents filed are frivolous.

23 That the court determine there should not be any frivolous penalties.

24 That the court order all penalties payed thus far must be refunded, with
25 interest.

26 Issue a ruling that Schlabach acted in good faith in relying on the Court
27 rulings and Title 12 USC sections 411 and 95a.

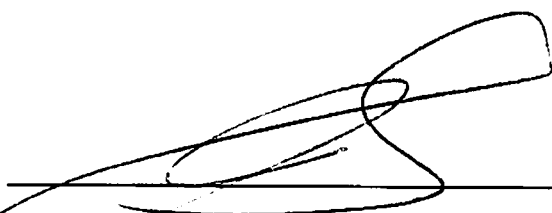
28 For such other and further relief the courts deems necessary.

Plaintiff reserves the right to amend this complaint if necessary.

CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.



John Schlabach
PO Box 362
Mead, Washington 99021
509-953-1060 johnjsch@gmail.com

2-13-18

Dated

EXHIBIT A

Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0010

November 26, 2016

Your letter dated November 28, 2016, copy enclosed

Sir, Agent, Caller ID S21186.

Replying to your letter, I have reached the age of majority; and, I have carefully read your Notice; and further, I have carefully read THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS, March 2014, court ready document copy enclosed and IRS 2007-30.

I am at a loss and at a disadvantage as you have made threats, and assessments, without notice or support leaving me to wonder your purpose. I have carefully reviewed and researched my records and cannot find any record that would fall within the previews of the March 2014 briefing or IRS 2007-30 you noted.

My legal research informs me that notice and opportunity to be heard is a mandate, by statute and rulings, before making assessments. Apparently there are two assessment of a frivolous position you are referring to and none of them are known to me. I could obtain an injunction until you provide copies of what you are referring to as frivolous. I am advised that a federal judge would grant an injunction based on the threats without facts to support such threats along with my affidavit stating that fact and or not having any knowledge of what source you are making such determinations. The court wants me to try to resolve this first and also exhaust my administrative remedies.

I have no desire to go to court, as it is expensive, without first allowing you an opportunity to provide me with a copy of the document that allegedly was filed that you are saying is or was frivolous. With the false tax return filings with the IRS and theft of identity the document(s) may exist or it could be a false document filed without my knowledge.

Please, as soon as you can, send me a copy of what you are reviewing so I can make a lawful and informed response. I cannot pay the amount in advance, and knowing the statute requirements for of notice and right to be heard, legal action is my last result.

This request also requests time of 30 days for me to respond from the time you send the alleged supporting documents.

I understand this could be an error and if it is I am requesting it be corrected.

Thank you in advance for your prompt response.

John Schlabach
PO Box 362
Mead, Washington 99021

EXHIBIT B

Revenue Ruling bulletin: 2010-7

April 26, 2010

Notice 2010-33

Frivolous Positions

I. Purpose

Positions that are the same as or similar to the positions listed in this notice are identified as frivolous for purposes of the penalty for a "frivolous tax return" under section 6702(a) of the Internal Revenue Code and the penalty for a "specified frivolous submission" under section 6702(b). Persons who file a purported return of tax, including an original or amended return, based on one or more of these positions are subject to a penalty of \$5,000 if the purported return of tax does not contain information on which the substantial correctness of the self-assessed determination of tax is substantially incorrect. Likewise, persons who submit a "specified submission" (namely, a request for a collection due process hearing or an application for an installment agreement, offer-in-compromise, or taxpayer assistance order) based on one or more of the positions listed in this notice are subject to a penalty of \$5,000. The penalty may also be applied if the purported return or any portion of the specified submission is not based on a position set forth in this notice, yet reflects a desire to delay or impede the administration of Federal tax laws for purposes of section 6702(a)(2)(B) or 6702(b)(2)(A)(ii). The penalty will be imposed only when the frivolous position or desire to delay or impede the administration of Federal tax laws appears on the face of the return, purported return, or specified submission, including any attachments to the return or submission.

II. Background

Section 407 of Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922, 2960-62 (2006), amended section 6702 to increase the amount of the penalty for frivolous tax returns from \$500 to \$5,000 and to impose a penalty of \$5,000 on any person who submits a "specified frivolous submission." A submission is a "specified frivolous submission" if it is a "specified submission" (defined in section 6702(b)(2)(B)) as a request for a hearing under section 6320 or 6330 or an application under section 6159, 7122 or 7811) and any portion of the submission (i) is based on a position identified by the Secretary as frivolous or (ii) reflects a desire to delay or impede administration of the Federal tax laws. Section 6702 was further amended to add a new subsection (c) requiring the Secretary to prescribe, and periodically revise, a list of positions identified as frivolous. Notice 2007-30, 2007-1 C.B. 883, contained the prescribed list. Notice 2007-30 was modified and superseded by Notice 2008-14, 2008-1 C.B. 310, which added frivolous positions to the prescribed list. This notice revises the list in Notice 2008-14 to add additional positions identified as frivolous. The positions that have been added are found in paragraphs 21, 22, and 27.

III. Discussion

Positions that are the same as or similar to the following are frivolous.

(1) Compliance with the internal revenue laws is voluntary or optional and not required by law, including arguments that:

(a) Filing a Federal tax or information return or paying tax is purely voluntary under the law, or similar arguments described as frivolous in Rev. Rul. 2007-30, 2007-1 C.B. 863.

(b) Nothing in the Internal Revenue Code imposes a requirement to file a return or pay tax, or that a person is not required to file a tax return or pay a tax unless the Internal Revenue Service responds to the person's

(7) Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006-18, 2006-1 C.B. 743.

(8) Only certain types of income are taxable, for example, income that results from the sale of alcohol, tobacco, or firearms or from transactions or activities that take place in interstate commerce.

(9) Federal income taxes are unconstitutional or a taxpayer has a constitutional right not to comply with the Federal tax laws for one of the following reasons:

(a) The First Amendment permits a taxpayer to refuse to pay taxes based on religious or moral beliefs.

(b) A taxpayer may withhold payment of taxes or the filing of a tax return until the Service or other government entity responds to a First Amendment petition for redress of grievances.

(c) Mandatory compliance with, or enforcement of, the tax laws invades a taxpayer's right to privacy under the Fourth Amendment.

(d) The requirement to file a tax return is an unreasonable search and seizure contrary to the Fourth Amendment.

(e) Income taxation, tax withholding, or the assessment or collection of tax is a "taking" of property without due process of law or just compensation in violation of the Fifth Amendment.

(f) The Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.

(g) The Ninth Amendment exempts those with religious or other objections to military spending from paying taxes to the extent the taxes will be used for military spending.

(h) Mandatory or compelled compliance with the internal revenue laws is a form of involuntary servitude prohibited by the Thirteenth Amendment.

(i) Individuals may not be taxed unless they are "citizens" within the meaning of the Fourteenth Amendment.

(j) The Sixteenth Amendment was not ratified, has no effect, contradicts the Constitution as originally ratified, lacks an enabling clause, or does not authorize a non-apportioned, direct income tax.

(k) Taxation of income attributed to a trust, which is a form of contract, violates the constitutional prohibition against impairment of contracts.

(l) Similar constitutional arguments described as frivolous in Rev. Rul. 2005-19, 2005-1 C.B. 819.

(10) A taxpayer is not a "person" within the meaning of section 7701(a)(14) or other provisions of the Internal Revenue Code, or similar arguments described as frivolous in Rev. Rul. 2007-22, 2007-1 C.B. 866.

(11) Only fiduciaries are taxpayers, or only persons with a fiduciary relationship to the United States are obligated to pay taxes, and the United States or the Service must prove the fiduciary status or relationship.

(12) Federal Reserve Notes are not taxable income when paid to a taxpayer because they are not gold or silver and may not be redeemed for gold or silver.

(13) In a transaction using gold and silver coins, the value of the coins is excluded from income or the amount realized in the transaction is the face value of the coins and not their fair market value for purposes of determining taxable income.

(14) A taxpayer who is employed on board a ship that provides meals at no cost to the taxpayer as part of the employment may claim a so-called "Manner's Tax Deduction" (or the like) allowing the taxpayer to deduct from gross income the cost of the meals as an employee business expense.

questions, correspondence, or a request to identify a provision in the Code requiring the filing of a return or the payment of tax.

(c) There is no legal requirement to file a Federal income tax return because the instructions to Forms 1040, 1040A, or 1040EZ or the Treasury regulations associated with the filing of the forms do not display an OMB control number as required by the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq., or similar arguments described as frivolous in Rev. Rul. 2006-21, 2006-1 C.B. 745.

(d) Because filing a tax return is not required by law, the Service must prepare a return for a taxpayer who does not file one in order to assess and collect tax.

(e) A taxpayer has an option under the law to file a document or set of documents in lieu of a return or elect to file a tax return reporting zero taxable income and zero tax liability, even if the taxpayer received taxable income during the taxable period for which the return is filed, or similar arguments described as frivolous in Rev. Rul. 2004-34, 2004-1 C.B. 619.

(f) An employer is not legally obligated to withhold income or employment taxes on employees' wages.

(g) Only persons who have contracted with the government by applying for a governmental privilege or benefit, such as holding a Social Security number, are subject to tax, and those who have contracted with the government may choose to revoke the contract at will.

(h) A taxpayer may lawfully decline to pay taxes if the taxpayer disagrees with the government's use of tax revenues, or similar arguments described as frivolous in Rev. Rul. 2005-20, 2005-1 C.B. 821.

(i) An administrative summons issued by the Service is *per se* invalid and compliance with a summons is not legally required.

(2) The Internal Revenue Code is not law (or "positive law") or its provisions are ineffective or inoperative, including the sections imposing an income tax or requiring the filing of tax returns, because the provisions have not been implemented by regulations even though the provisions in question either (a) do not expressly require the Secretary to issue implementing regulations to become effective or (b) expressly require implementing regulations which have been issued.

(3) A taxpayer's income is excluded from taxation when the taxpayer rejects or renounces United States citizenship because the taxpayer is a citizen exclusively of a State (sometimes characterized as a "natural-born citizen") of a "sovereign state", that is claimed to be a separate country or otherwise not subject to the laws of the United States. This position includes the argument that the United States does not include all or a part of the physical territory of the 50 States and instead consists of only places such as the District of Columbia, Commonwealths and Territories (e.g., Puerto Rico), and Federal enclaves (e.g., Native American reservations and military installations), or similar arguments described as frivolous in Rev. Rul. 2004-28, 2004-1 C.B. 624, or Rev. Rul. 2007-22, 2007-1 C.B. 866.

(4) Wages, tips, and other compensation received for the performance of personal services are not taxable income or are offset by an equivalent deduction for the personal services rendered, including an argument that a taxpayer has a "claim of right" to exclude the cost or value of the taxpayer's labor from income or that taxpayers have a basis in their labor equal to the fair market value of the wages they receive, or similar arguments described as frivolous in Rev. Rul. 2004-29, 2004-1 C.B. 627, or Rev. Rul. 2007-19, 2007-1 C.B. 843.

(5) United States citizens and residents are not subject to tax on their wages or other income derived from sources within the United States, as only foreign-based income or income received by nonresident aliens and foreign corporations from sources within the United States is taxable, and similar arguments described as frivolous in Rev. Rul. 2004-30, 2004-1 C.B. 622.

(6) A taxpayer has been untaxed, deltaxed, or removed or redeemed from the Federal tax system though the taxpayer remains a United States citizen or resident, or similar arguments described as frivolous in Rev. Rul. 2004-31, 2004-1 C.B. 617.

(15) A taxpayer may purport to operate a home-based business as a basis to deduct as business expenses the taxpayer's personal expenses or the costs of maintaining the taxpayer's household when the maintenance items or amounts as reported do not correspond to a *bona fide* home business, such as when they are grossly excessive in relation to the conceivable costs for some portion of the home being used exclusively and regularly as a business, or similar arguments described as frivolous by Rev. Rul. 2004-32, 2004-1 C.B. 621.

(16) A "reparations" tax credit exists, including arguments that African-American taxpayers may claim a tax credit on their Federal income tax returns as reparations for slavery or other historical mistreatment, that Native Americans are entitled to an analogous credit (or are exempt from Federal income tax on the basis of a treaty), or similar arguments described as frivolous in Rev. Rul. 2004-33, 2004-1 C.B. 628, or Rev. Rul. 2006-20, 2006-1 C.B. 746.

(17) A Native American or other taxpayer who is not an employer engaged in a trade or business may nevertheless claim (for example, in an amount exceeding all reported income) the Indian Employment Credit under section 45A, which explicitly requires, among other criteria, that the taxpayer be an employer engaged in a trade or business to claim the credit.

(18) A taxpayer's wages are excluded from Social Security taxes if the taxpayer waives the right to receive Social Security benefits, or a taxpayer is entitled to a refund of, or may claim a charitable-contribution deduction for, the Social Security taxes that the taxpayer has paid, or similar arguments described as frivolous in Rev. Rul. 2005-12, 2005-1 C.B. 823.

(19) Taxpayers may reduce or eliminate their Federal tax liability by altering a tax return, including striking out the penalty-of-perjury declaration, or attaching documents to the return, such as a disclaimer of liability, or similar arguments described as frivolous in Rev. Rul. 2005-18, 2005-1 C.B. 817.

(20) A taxpayer is not obligated to pay income tax because the government has created an entity separate and distinct from the taxpayer—a "straw man"—that is distinguishable from the taxpayer by some variation of the taxpayer's name, and any tax obligations are exclusively those of the "straw man," or similar arguments described as frivolous in Rev. Rul. 2005-21, 2005-1 C.B. 822.

(21) A taxpayer may use a Form 1099-OID, *Original Issue Discount*, (or another Form 1099 Series information return) as a financial or other instrument to obtain or redeem (under a theory of "redemption" or "commercial redemption") a monetary payment out of the United States Treasury or for a refund of tax, such as by drawing on a "straw man" or similar financial account maintained by the government in the taxpayer's name (see paragraph (20), above); a taxpayer may file a Form 56, *Notice Concerning Fiduciary Relationship*, that names the Secretary of the Treasury or some other government employee as a fiduciary of the taxpayer and requires the Treasury Department to honor a Form 1099-OID as a financial or redemption instrument, or similar arguments described as frivolous in Rev. Rul. 2005-21, 2005-1 C.B. 822, and Rev. Rul. 2004-31, 2004-1 C.B. 617.

(22) A taxpayer may claim on an income tax return or purported return an amount of withheld income tax or other tax that is obviously false because it exceeds the taxpayer's income as reported on the return or is disproportionately high in comparison with the income reported on the return or information on supporting documents filed with the return (such as Form 1099 Series, Form W-2, or Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*).

(23) Inserting the phrase "nunc pro tunc" on a return or other document filed with or submitted to the Service has a legal effect, such as reducing a taxpayer's tax liability, or similar arguments described as frivolous in Rev. Rul. 2006-17, 2006-1 C.B. 748.

(24) A taxpayer may avoid tax on income by attributing the income to a trust, including the argument that a taxpayer can put all of the taxpayer's assets into a trust to avoid income tax while still retaining substantial powers of ownership and control over those assets or that a taxpayer may claim an expense deduction for the income attributed to a trust, or similar arguments described as frivolous in Rev. Rul. 2006-19, 2006-1 C.B. 749.

(25) A taxpayer may lawfully avoid income tax by sending income offshore, including depositing income into a foreign bank account.

(26) A taxpayer can claim the section 44 Disabled Access Credit to reduce tax or generate a refund, for example, by purportedly having purchased equipment or services for an inflated price (which may or may not have been actually paid), even though it is apparent that the taxpayer did not operate a small business that purchased the equipment or services to comply with the requirements of the Americans with Disabilities Act.

(27) A taxpayer may claim a refund of tax based on purported advance payments to employees of the Earned Income Tax Credit as reported by the taxpayer on a filed Form 941, *Employer's Quarterly Federal Tax Return*, or other employment tax return that reports an amount of purported wages, tips, or other compensation but leaves other line items on the return blank (or with a zero as the amount).

(28) A taxpayer may claim the section 6421 fuels tax credit (such as on Form 4136, *Credit for Federal Tax Paid on Fuels*, Form 8849, *Claim for Refund of Excise Taxes*, or Form 1040) even though the taxpayer did not buy the gasoline or the gasoline was not used for an off-highway business use during the period for which the credit is claimed. Also, if the taxpayer claims an amount of credit that is so disproportionately excessive to any (including zero) business income reported on the taxpayer's income tax return as to be patently unreasonable (e.g., a credit that is 150 percent of business income reported on Form 1040) or facially reflects an impossible quantity of gasoline given the business use, if any, as reported by the taxpayer.

(29) A taxpayer is allowed to buy or sell the right to claim a child as a qualifying child for purposes of the Earned Income Tax Credit.

(30) An IRS Form 23C, *Assessment Certificate — Summary Record of Assessments*, is an invalid record of assessment for purposes of section 6203 and *Treas. Reg. § 301.6203-1*, the Form 23C must be personally signed by the Secretary of the Treasury for an assessment to be valid. The Service must provide a copy of the Form 23C to a taxpayer if requested before taking collection action, or similar arguments described as frivolous in Rev. Rul. 2007-21, 2007-1 C.B. 865.

(31) A tax assessment is invalid because the assessment was made from a section 6020(b) substitute for return, which is not a valid return.

(32) A statutory notice of deficiency is invalid because the taxpayer to whom the notice was sent did not file an income tax return reporting the deficiency or because the statutory notice of deficiency was unsigned or not signed by the Secretary of the Treasury or by someone with delegated authority.

(33) A Notice of Federal Tax Lien is invalid because it is not signed by a particular official (such as by the Secretary of the Treasury), or because it was filed by someone without delegated authority.

(34) The form or content of a Notice of Federal Tax Lien is controlled by or subject to a state or local law, and a Notice of Federal Tax Lien that does not comply in form or content with a state or local law is invalid.

(35) A collection due process notice under section 6320 or 6330 is invalid if it is not signed by the Secretary of the Treasury or other particular official, or if no certificate of assessment is attached.

(36) Verification under section 6330 that the requirements of any applicable law or administrative procedure have been met may only be based on one or more particular forms or documents (which must be in a certain format), such as a summary record of assessment, or that the particular forms or documents or the ones on which verification was actually determined must be provided to a taxpayer at a collection due process hearing.

(37) A Notice and Demand is invalid because it was not signed, was not on the correct form (e.g., a Form 17), or was not accompanied by a certificate of assessment when mailed.

(38) The United States Tax Court is an illegitimate court or does not, for any purported constitutional or other reason, have the authority to hear and decide matters within its jurisdiction.

(39) Federal courts may not enforce the internal revenue laws because their jurisdiction is limited to admiralty or maritime cases or issues.

(40) Revenue Officers are not authorized to issue levies or Notices of Federal Tax Lien or to seize property in satisfaction of unpaid taxes.

(41) A Service employee lacks the authority to carry out the employee's duties because the employee does not possess a certain type of identification or credential, for example, a pocket commission or a badge, or it is not in the correct form or on the right medium.

(42) A person may represent a taxpayer before the Service or in court proceedings even if the person does not have a power of attorney from the taxpayer, has not been enrolled to practice before the Service, or has not been admitted to practice before the court.

(43) A civil action to collect unpaid taxes or penalties must be personally authorized by the Secretary of the Treasury and the Attorney General.

(44) A taxpayer's income is not taxable if the taxpayer assigns or attributes the income to a religious organization (a "corporation sole" or ministerial trust) claimed to be tax-exempt under section 501(c)(3), or similar arguments described as frivolous in Rev. Rul. 2004-27, 2004-1 C.B. 613.

(45) The Service is not an agency of the United States government but rather a private-sector corporation or an agency of a State or Territory without authority to administer the internal revenue laws.

(46) Any position described as frivolous in any revenue ruling or other published guidance in existence when the return adopting the position is filed with or the specified submission adopting the position is submitted to the Service.

Returns or submissions that contain positions not listed above, which on their face have no basis for validity in existing law, or which have been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction, may be determined to reflect a desire to delay or impede the administration of Federal tax laws and thereby subject to the \$5,000 penalty.

The list of frivolous positions above will be periodically revised as required by section 6702(c).

IV. Effective Date

This notice is effective for submissions made and issues raised after April 7, 2010. For submissions made and issues raised between January 14, 2008 and April 7, 2010, Notice 2008-14 applies.

V. Effect on Other Documents

Notice 2008-14 is modified and superseded.

VI. Drafting Information

The principal author of this notice is Emily M. Lesniak, Office of the Associate Chief Counsel, Procedure and Administration. For further information, contact Emily M. Lesniak at 202-612-4940 (not a toll-free number).

EXHIBIT C

Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0010

December 11, 2017

Your letter(s) CP15 dated December 4, 2017, copy enclosed

Caller ID 681045.

I have reviewed your notice of penalty charge and am returning same for supporting documentation. I have no idea what you are relying on for your comments. You said I have based my claim on a frivolous position. Because I have not filed anything that I am aware of that is frivolous within the definition as outlined in internal revenue bulletin: 2010-17. I understand my next step is filing in federal court, which has jurisdiction to determine refunds, but I am entitled to the documentation upon which you are making this frivolous claim, as the burden is on you.

Mattingly v. United States, 924 F.2d 785 (8th Cir. 1991)

¶ 31, We find the reasoning of Mitchell more persuasive and hold that in actions brought under § 6701 the burden of proof is on the government by a preponderance of the evidence. This holding is based on our view of the statutory language, the integrated enactment of §§ 6700-03 and the overall structure of the civil tax penalty provisions.

I'm sure a federal judge will agree that I am entitled to know what you are referring to. I have searched the IRS sites and have read all the position determinations listed, and there is nothing that I have filed that is frivolous. The district court has jurisdiction to make the determination of whether or not the penalty is valid.

White v. US, 250 F. Supp. 2d 919 - Dist. Court, MD Tennessee 2003

In a frivolous return penalty case, jurisdiction lies with the district court, rather than the tax court. "[U]nder section 6703 [the tax court] lack[s] jurisdiction to review assessments of section 6702 frivolous return penalties" Van Es v. Commissioner, 115 T.C. 324, 325, 2000 WL 1520321 (2000). A person "must bring suit in district court to determine his liability for [a section 6702] penalty." 26 U.S.C. § 6703(c)(2). See Cotton v. Gibbs, 902 F.2d 1462 (9th Cir.1990); Reinhart v. I.R.S., 2002 WL 1095351 at *4 (E.D.Cal. May 24, 2002) ("[i]n the case of a frivolous return penalty under 26 U.S.C. § 6702, the district court is the proper reviewing court."). Plaintiff has appropriately filed his Complaint in this Court with respect to his challenge to the frivolous return penalty under section 6702.

I have not received any documents from you responsive to my prior requests, so I must assume that your frivolous claim is in error. However, I am now asking again for the document(s) upon which your frivolous claim is made. If I must, I will ask the federal judge to issue a court order mandating you provide me with said document.

You are aware of illegal, fraudulent filings from unknown persons, and such documents could easily be what you are relying on in this matter. If you are relying on any fraudulently filed documents I am entitled to due process and a timely review of any such documents.

I filed a timely return statement that meets all the requirement for a valid return, as directed by the court in *Beard v. Commissioner* [Dec. 41,237], 82 T.C. 766, 777 (1984), affd. [86-2 USTC ¶ 9496] 793 F.2d 139 (6th Cir. 1986).

The Code does not define the word "return". See *Mendes v. Commissioner*, 121 T.C. 308, 329 (2003) (Vasquez, J., concurring); *Swanson v. Commissioner*, 121 T.C. 111, 122-123 (2003). On the basis of the Supreme Court's opinions in *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 180 (1934), and *Florsheim Bros. Drygoods Co. v. United States*, 280 U.S. 453, 464 (1930), in *Beard v. Commissioner*, *supra* at 777, we applied a four-part test (Beard test) for determining whether a taxpayer's document **constitutes a valid return**. To be a valid return, we said the document must meet the following requirements:

First, there must be sufficient data to calculate [the] tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury. [Id.]

My original statement meets all of these requirements articulated above, and is therefore not frivolous. After which I filed a form 1040 pursuant to 12 USC section 411 and section 95A, redeeming lawful money. The court stated in *Milam v. United States*, 524 F. 2d 629 - Court of Appeals, 9th Circuit 1974; "Appellant is entitled to redeem his note, but not in precious metal." "United States v. Thomas, 319 F. 3d 640 - Court of Appeals, 3rd Circuit 2003; Currency, however, differs substantially from such objects. Paper currency, in the form of the Federal Reserve Note, is defined as an "obligation of the United States" that may be "redeemed in lawful money on demand." 12 U.S.C. § 411".

Further 12 USC section 95a(2), copy attached, states clearly that any and all attempts to comply with title 12 shall not create any liability in any court or proceeding. The Federal Reserve Act provides for the redemption of Federal Reserve notes in lawful money "United States Notes", (<http://www.federalreserve.gov/aboutthefed/section16.htm>) and within the same title, 95a, providing for no penalty for attempting to comply with the act. Therefore, nothing I have filed can be determined as frivolous. If your penalty is based on the 12 USC 411 demand, in good faith, then it would also be an illegal penalty as it violates the clear mandate of 12 USC 95a(2). Wherefore please, by return mail, notify me of the object that is frivolous and how it is incorporated into the Internal Revenue determinations.

All transactions are endorsed, redeeming in lawful money pursuant to 12 USC 411, sampling attached, as provided by statute. Complying with the law, or attempting to comply with the statutes is not a frivolous act and when the statutes clearly states there can be no penalty for such attempts your penalty must fail.

Thank you in advance for your prompt response.

John Schlabach
PO Box 362
Mead, Washington 99021

CC:

Treasury Inspector General for Tax Administration
Headquarters City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

EXHIBIT D

SSN#

Joint SSN#

Tax yr 2009 ASER 6/21/14Promoter: Advised in law firm

Preparer:

3rd PartyArgument Code: 30 Name BOpen TXMOD Control D

91852 91854 91858 91753

Form Refund claim\$

SC Code Date of Ref

Refund \$

Offset \$

Intercept \$

Credit Interest \$

Z Frz TC Agent

DLN

IRS Rec'd Date: 6/2/14FRP Rec'd Date: 5/23/17Prim. TP Issue # 1261953

Prim. TP Penalty #

Sec. TP Issue #

Sec. TP Penalty #

Effective 07/2006

Revised 02/01/2017

A Frivolous Position is one that the IRS has identified as being frivolous, or that reflects a desire to delay or impede the administration of Federal tax laws. Frivolous returns generally fall under one or more of the five basic categories.

Category	Arguments

Other Arguments

- ARG 10 - Fifth Amendment (5AMEND)
- ARG 16 - In Lieu of (ILO)
- ARG 17 - Disclaimer (DISCL)
- ARG 18 - Protest Against Government Action/Inaction (WARTAX)
- ARG 20 - Challenges to Authority (CONST)
- ARG 21 - Paperwork Reduction Act
- ARG 22 - IRS Collects Tribute, Not Taxes (TRIBU)
- ARG 24 - Amended Returns/Form 843 Claim for Refund and Request for Abatement (AMEND)
- ARG 25 - Untaxed (UNTAX)
- ARG 26 - Federal Reserve Notes Are Not Legal Tender (FEDRES)
- ARG 28 - Obscene, Vulgar, Harassing (OBSC)
- ARG 29 - Any other position deemed frivolous
- ARG 30 - Non-negotiable Chargeback (NNCB)
- ARG 34 - 1041 - In Lieu of 1040 (1041 ILO)
- ARG 47 - C-Filings

EXHIBIT E

Treasury Inspector General for Tax Administration
Headquarters City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

December 31, 2017

REQUEST FOR ASSISTANCE

Dear Treasury Inspector General,

Greetings, my name is John Schlabach. my address is P.O. Box 362, Mead, Washington. I am writing to you because I filed several 1040 tax returns with the IRS, and they are not being processed as requested.

What I need from you, as my representative to the Federal Government, is to check the facts as filed or inquire with the US Treasury Secretary's office as to why my returns, which were clearly filed pursuant to statutes and mandates, are not processed. My understanding is that there was some sort of audit, but I'm not clear as to what it was about. I don't understand why my income, which has been redeemed in lawful money pursuant to 12 USC § 411 and § 95a, as per my demand made on my paycheck endorsements, is not being treated as lawful money. The federal reserve act specifically states that federal reserve notes "shall be redeemed in lawful money on demand ... [a]t any Federal Reserve bank." See:

<http://www.federalreserve.gov/aboutthefed/section16.htm>

My returns specifically claimed that all my paychecks were redeemed at a Federal Reserve bank in lawful money, pursuant to 12 USC § 411, and that as a result I am entitled to a full refund of all money withheld. Further, the IRS is imposing \$5000.00 penalties against me for what they claim are "frivolous returns." However, when questioning them as to what they are deeming "frivolous" they have fallen silent. Even when I requested this information using the Freedom of Information Act they have refused to respond to my requests. Being penalized for redeeming my paychecks in lawful money pursuant to 12 USC § 411 is a violation of 12 USC § 95a, since I am being penalized for utilizing my right and remedy provided under the law. Further, I have researched the IRS "THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS, January 2015" and cannot find anything that applies in my filings. Copy attached.

I understand clearly that Federal Reserve Notes are taxable, and I am not disputing this fact. However, the Supreme Court has ruled that federal reserve notes act as lawful money (such as US Notes) if such a demand for lawful money has been made. Further, in *Veasie v. Fenno*, 75 US 533, the Supreme Court stated that "United States Notes cannot be the subject of a tax." My lawful money demand has been made (shown on my paycheck endorsements and on each Form 1040), and per my public notice filed at the Spokane County Court House indicating my intentions to transact in lawful money. My returns reflect that I have only received lawful money for my paychecks, via my restricted endorsement and therefore should not, and can not, be treated as private credit extended to the Federal Reserve Banking System, known as Federal Reserve Notes.

To be clear, I am NOT asking for redemption in gold, or any other precious metal. I am asking that my income be treated as United States Notes (US Notes), which are lawful money as per my demands, and that any tax liability applied to my earnings be calculated to reflect that I have received US Notes (lawful money), non-negotiable, as I have indicated on my IRS Form 1040s that I have filed. It has always been my intention to use lawful money.

Please include me in any correspondence that you have with the US Treasury Department on my behalf.

I wish only to have the Tax Liability, if any, applied to me that is lawfully required for receiving lawful money, not negotiable elastic Federal Reserve notes, and would like my returns processed as filed, not ignored, and my demand under 12 USC 411 honored. My filings follow the instruction of 12 USC § 411 and § 95a, and should be processed as such. Any deficiencies and penalties nullified and my case handled at the administrative level.

Wherefore, I request that you intervene, or provide me with the proper appeals process, and have my case reviewed from the legal points of law and properly disposed of.

Respectfully submitted,

John Schlabach
P.O. Box 362
Mead, WA 99021

CC: Internal Revenue Service
Attn. Bobbi S. Martin, Operations Manager
Fresno Service Center
Fresno, CA 93888-0029

EXHIBIT 2

ORIGINAL

AO 440 (Rev. 06/12) Summons in a Civil Action

FILE WITH CLERK'S OFFICE**UNITED STATES DISTRICT COURT**

for the

Eastern District of WashingtonFILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**MAR 01 2018**SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

John Schlabach

Plaintiff(s)

v.

Internal Revenue Service or its Agents

Defendant(s)

Civil Action No.

2:18-cv-00053-SMJ**SUMMONS IN A CIVIL ACTION**To: *(Defendant's name and address)*Internal Revenue Service and its agents.
Frivolous Return Program Stop 4450
Ogden Utah, 84201-0021

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

John Schlabach
PO Box 362
Mead, Washington 99021

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

2/13/2018

Date

CLERK OF COURT



SEAN F. McAVOY, Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☒ Other *(specify)*: mailed certified to:

IRS

7016 1370 0000 0079 3837

Delivered 2-21-18

USDOJ

7016 1370 0000 0079 3844

Delivered 2-23-18

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

2-24-18

Date

Server's signature

Printed name and title

Box 362 Mead Wa 99021

Server's address

Additional information regarding attempted service, etc:

Track Another Package +

Tracking Number: 70161370000000793837

Status

Your item was delivered at 10:40 am on February 21, 2018
in OGDEN, UT 84201.

 **Delivered**

February 21, 2018 at 10:40 am
Delivered
OGDEN, UT 84201

USPS Tracking[®]

Track Another Package +

Tracking Number: 70161370000000793844

Status

Your item was delivered at 5:46 am on February 23, 2018
in WASHINGTON, DC 20530.

 **Delivered**

February 23, 2018 at 5:46 am
Delivered
WASHINGTON, DC 20530

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

John J Schlabach,
Plaintiff,

Case No.: 2:18-cv-00053-SMJ

vs.

Internal Revenue Service and its agents,
Defendant.

CERTIFICATE OF SERVICE

I, John J Schlabach, hereby certify that I am of such age and discretion as to be
competent to serve papers.

I further certify that on this date I caused a copy of the Motion for Entry of Default,
Affidavit in Support of Motion for Entry of Default and proposed Entry of Default to be
placed in a postage-paid envelope addressed to the defendant(s), at the address(es)
stated below, which is (are) the last known address(es) of said defendant(s), and
deposited said envelope(s) in the United States mail.

Addressee: Internal Revenue Service and its agents.
ATTN; Denise D Davis
Frivolous Return Program Stop 4450
Ogden Utah, 84201-0021.

Dated this 7th day of May 2018



FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 19 2018

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

John J Schlabach,

Plaintiff,

v.

Internal Revenue Service and its agents,

Defendant.

CASE NO. 2:18-cv-00053-SMJ

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
DEFAULT FINAL JUDGMENT**

The Plaintiff hereby submits this Memorandum of Law in support of the Motion for Default Final Judgment and injunctive relief against defendant(s).

I

Factual Background

The has continually redeemed federal reserve notes pursuant to the authority of 12 USC 411 and as provided in the federal reserve act as amended Jan 30, 1934. Plaintiff filed his tax returns pursuant to the guidance of the supreme court in Veasie v. Fenno, 75 US 533 that United States Notes [lawful money] cannot be the subject of a tax. See also McCulloch v. Maryland, 17 U.S. 316. After numerous letters stating the facts and court rulings the IRS issues penalties without explanation and without cause. Plaintiff filed a FOIA for the information and found an agent had entered false or incorrect information to attempt to circumvent the provision of the statutes and the case law and opinions of district courts. Plaintiff paid the penalties and filed for refunds which was denied giving court jurisdiction.

The Plaintiff filed a Complaint against the defendant on February 13, 2018 in the United States District Court for the Eastern District of Washington. The Complaint alleges violations of 26 USC section 6702 and 12 USC section 411. Further that claims for refund were either ignored or

denied without cause. On the same day the Plaintiff filed his Complaint, the Court issued a Summons in this Civil Action which, in part, notified defendant^{9s0} that they must, within sixty days after service of the Summons, file with the Clerk of Court, and serve upon the attorney for the Plaintiff, an Answer to the Complaint. Defendant(s), through its Director or manager, Denise Davis, received service of the Complaint and Summons on February 21, 2018 and their attorney United States Attorney General served the Complaint and Summons on February 23, 2018 their place of business in Washington DC.

By the expiration of the sixty-day period specified on the Summons, the defendant had not filed an Answer to the Complaint with the Clerk of this Court, nor had it served a copy of the Answer upon the Plaintiff. To date, the defendant has not responded to the Complaint, nor otherwise appeared in this action.

On May 12, 2018, the Plaintiff notified Internal Revenue Service or its agents by certified mail that he intended to petition the court for a judgment by default. The Plaintiff received no response from Internal Revenue Service, nor any other agent or representative of defendant, to this letter.

II

The Defendant Has Failed to Answer the Complaint or Otherwise Defend This Action and the Plaintiff is Entitled to a Judgment By Default

Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure provides that a defendant shall serve its answer to a complaint within twenty days of service of the latter. As noted above, the Complaint in this case was filed on February 13, 2018, and served upon the defendant, through its agency, on February 21, 2018 and the United States Attorney General was served on February 23, 2018. The Summons, issued by the Court on February 13 and served upon the defendant together with the Complaint, notified the defendant of their obligation to file an answer with the Clerk of Court, and to serve a copy of the Answer upon the Plaintiff, within sixty days from the date of service. Sixty days, excluding the Presidents Day. (Fed.R.Civ.P. 6(a)), from the February 21 service date was April 13, 2018. As of April 13, 2018, defendant had not filed an answer with the Clerk, had not served an answer upon the Plaintiff, had made no entry of appearance in this

matter, and had not otherwise responded to the civil action instituted against it by the Plaintiff. To this date, defendant has undertaken no defense in this matter.

The Plaintiff recognizes that entry of a default judgment against a defendant is a severe remedy. See, e.g., E.F. Hutton & Co., Inc. v. Moffatt, 460 F.2d 284, 285 (5th Cir. 1972). Where, as here, however, a party does not respond to a properly served Complaint and ignores a duly issued and properly served Summons of a Court, a default judgment, though drastic, is the appropriate and, indeed, only recourse. See In re Knight, 833 F.2d 1515, 1516 (11th Cir. 1987)(where party offers no good reason for late filing of answer, entry of default judgment appropriate); First City Nat'l Bank of Fort Worth v. Cook, 117 F.R.D. 390 (N.D. Tex. 1987)(default judgment appropriate where party served has failed to answer). The Plaintiff would prefer that this case be decided upon its merits and has every confidence it would prevail at a trial. Since the defendant does not appear disposed to defend this action, however, this Court has as the only avenue available to conclude this matter, the entry of a default judgment against defendant.

III

The Injunctive Relief Sought by the Plaintiff Should Be Awarded by this Court

When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true, and this rule applies whether the complaint seeks legal or, as in this case, equitable relief. Fed. Trade Comm'n v. Kitco of Nevada, Inc. 612 F. Supp. 1282 (D.C. Minn. 1985). The Plaintiff is submitting to the Court, together with this Motion, a Default Final Judgment. For the benefit of this Court in determining the remedy to apply in this case, should the Court agree to enter a judgment by default against defendant, the Plaintiff offers the following summary of what it expects its evidence would have shown at a trial of this matter.

Summary

The plaintiff pursuant to 12 USC 411 and the Federal Reserve Act as amended, has been redeeming Federal Reserve Notes in Lawful Money, United States Notes. The United States Supreme Court ruled in *Veasie v. Fenno*, 75 US 533; *"United States Notes, obviously, cannot be the subject of a tax."* See also, *McCulloch v. Maryland*, 17 U.S. 316. Numerous courts have ruled that federal reserve notes are redeemable in US Notes, specifically the 9th circuit ruled in *Milam v. United States*, 524 F. 2d 629 *"appellant is entitled to redeem his note, but not in precious metal."*

Plaintiff, because the court ruled and the statutes and federal reserve act agree the U.S. Notes are not the subject of any tax, has notified the IRS on the 1040 form of said redemption and which also caused any tax liability to be reduced accordingly. Initially the IRS agents thought it was a frivolous act, after explanations were provided the IRS changed the determination and allowed the reduction.

Subsequently an agent either deliberately or by mistake encoded in plaintiffs file a frivolous code of an action that plaintiff never performed or alluded to. This caused the IRS agents in the frivolous unit to issue frivolous penalties and recording them in Plaintiffs IRS file.

Plaintiff filed a FOIA and the disclosure provided the exhibit in plaintiff's case in this action clearly showing the falsification of plaintiffs IRS file and contrary to the statutes and case law. Plaintiff paid under protest the alleged penalties and filed for a refund pursuant to the statutes 26 USC 6702. The IRS did not refund the claim and plaintiff filed this action.

Because the US Notes are not a subject of any tax the IRS agents are legally incorrect. The 1040 filings of the plaintiff are within the provisions of the statutes and the cases cited in the instant action. The court would have to find for the plaintiff and at the very least it cannot be determined as frivolous. Nor has the commissioner made such a determination as referenced in exhibit c of the complaint.

The IRS also issued penalties for 2009, 2010 and 2012. Plaintiff paid 15% of the said penalties and filed for refund as provided by statute and as the courts have ruled. *Thomas v. United States, 755 F.2d 728 (9th Cir. 1985)* However, 26 U.S.C. § 6703(c) provides an exception to the "full payment rule" of Flora in the case of the frivolous return penalty. It allows the taxpayer to pay only 15% of the penalty assessment (and file a claim for refund) "within 30 days after the day on which notice and demand . . . is made against [the taxpayer]." 26 U.S.C. § 6703(c)(1). Thomas paid the 15% amount and filed a claim for refund on July 11th, more than 30 days after the May 17th date the IRS mailed the notice, but within 30 days of June 28th, the date Thomas received the notice.

Defendant refunded the amount claimed and applied it to another year. Plaintiff would have proven the penalties were not valid or the defendant would not have refunded the claim. Further the court has jurisdiction over the penalties when a case is filed not the defendant.

Humphrey v. US, 854 F. Supp. 2d 1301 - Dist. Court, ND Georgia 2011; This Court has jurisdiction over Plaintiff's action because she filed for a refund with the IRS, paid the requisite portion of her penalty, and timely filed her action. The district courts have original jurisdiction over "any civil action against the United States for the recovery of ... any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." 28 U.S.C. § 1346(a)(1).

served by defendant upon the Plaintiff, the Plaintiff notified Denise Davis Director or manager for the of defendant, of the Plaintiffs intention to petition this Court for entry of a default judgment against defendant. A copy of said letter is attached hereto as Exhibit 3 and is incorporated herein by reference. No response to said letter has been received by the Plaintiff.

4. Defendant has failed to plead or otherwise defend this action, and the Plaintiff is entitled to judgment by default against defendant.

5. Pursuant to the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure, this Court is empowered to enter a default judgment against the defendant for relief sought by plaintiff in its complaint, and written notice of this action has been given to defendant as set forth in the attached affidavit.

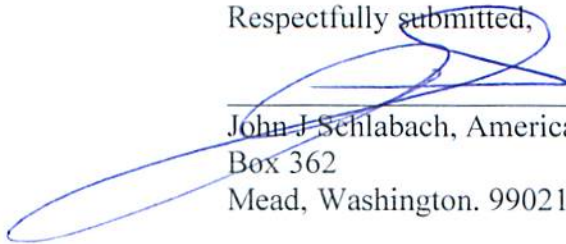
PRAYER

WHEREFORE, plaintiff prays that this Court enter a judgment of default against defendant, and that defendant be enjoined and restrained from violating Plaintiffs right to redeem federal reserve notes in lawful money and report said redemption on Plaintiffs tax returns. That defendant pays Plaintiff the refund as claimed in this action in the amount of 22,399.15 plus interest. That court rule that complying with the federal reserve act in redeeming lawful money and reporting this in the IRS filings is not a frivolous act. That the defendant must not issue penalties for redeeming lawful money as provided by the statutes and court decisions.

AFFIDAVIT

I, John J Schlabach, do hereby certify that the statements and allegations set forth in the foregoing Motion and the accompanying Memorandum are true and accurate to the best of my knowledge and belief.

Respectfully submitted,



John J Schlabach, American National
Box 362
Mead, Washington. 99021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

John J Schlabach,

Civil Action No. 2:18-cv-00053-SMJ

Plaintiff,

v.

Internal Revenue Service and its agents.

ORDER

Entered: _____

Filed: June ____, 2018
Sean F. McAvoy
CLERK U.S. DIST. CT.
E.D. OF WA.

THIS MATTER is before the Court upon the Motion For Entry Of Default Final Judgment filed herein by the Plaintiff. The Court has carefully considered the merits of said Motion, has reviewed the entire court file herein and is otherwise fully advised in the premises.

The Court notes that on February 21, 2018, the Defendant, Internal Revenue Service and its agents and on February 23, 2018 the United States Attorney General, was duly served (Exhibit 2 annexed to DE 2), with a copy of the Summons and Complaint filed herein, and that said Defendant(s) have failed to file the appropriate Motion or responsive pleading within the time prescribed by law. The Court further notes that on May 7, 2018, the Clerk of the United States District Court for the eastern District of Washing entered a Default against said Defendant for its failure to appear, answer or otherwise plead in this action.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the Plaintiff's Motion For Entry Of Default Final Judgment be and the same is hereby **GRANTED**. Default Final Judgment shall be entered by separate order of the Court.

DONE AND ORDERED in Chambers at Spokane, Washington, Spokane County, Washington, this ____ day of June, 2018.

Robert Mendoza
United States District Judge

Copies furnished:

John Schlabach
Plaintiff

JUN 19 2018

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

John J Schlabach,

Plaintiff,

v.

Internal Revenue Service and its agents,

Defendant.

CASE NO. 2:18-cv-00053-SMJ

DEFAULT FINAL JUDGMENT

WHEREAS plaintiff, John J Schlabach, having filed the Complaint in this action on February 13, 2018, and defendant having failed to plead or otherwise defend this action,

IT IS HEREBY ADJUDGED as follows:

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action, and over the person of the defendant, Internal Revenue Service and its agents. The Complaint states a claim upon which relief may be granted against the defendant under Section 26 USC 6703(c)(2),

II

APPLICABILITY

This Final Judgment shall apply to defendant and to each of its officers, directors, agents, employees.

III

PROHIBITED CONDUCT

Defendant is enjoined and restrained from:

- A. Issuing penalties against the plaintiff for reporting the redeeming lawful money;
- B. Making determinations that redeeming lawful money is a frivolous act;
- C. Refusing the process plaintiffs filings reporting the redemption is in lawful money.

V

COMPLIANCE

A. Defendant is ordered to:

- 1. Pay the plaintiff the default amount \$22,399.15 plus interest; and

2. Distribute in a timely manner a copy of this Final Judgment to any officer, manager, director or agent and to make the judgment part of Plaintiffs internal file.

B. If defendant learns of any violations of this Final Judgment, defendant shall forthwith take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment.


Internal Revenue Service Commissioner shall take appropriate action to insure agents comply with this order, or as otherwise required by law.

VI

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance herewith, and to punish any violations of its provisions. Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

ADJUDGED in Chambers at Spokane Washington, Spokane County, Washington, this _____ day of June, 2018.



Robert Mendoza
United States District Judge

Copies furnished:

For Plaintiff

John J Schlabach,
Box 362
Mead, Washington 99021