Lonnie Gene Vernon & Karen Louise Vernon
10314 Old Valdez Trail
Salcha, Alaska 99714
907-488-1868

RECEIVED
NOV 23 2009
CLERK, U.S. DISTRICT COURT
FAIRBANKS, AK

UNITED STATES OF AMERICA

Plaintiff

v.

LONNIE G. VERNON; and KAREN L. VERNON

Defendants

Counterclaim

Lonnie Gene Vernon, ***in propria persona;*** and

Karen Louise Vernon, ***in propria persona***

CounterPlaintiff

v.

UNITED STATES OF AMERICA

CounterDefendant

CASE 4:09-cv-00038-RRB

Opposition to Dismiss

Comes now Lonnie Vernon and Karen Vernon ("Vernons"), *in propria persona*, by limited special appearance, restricted appearance and not a general appearance with this **Opposition to Dismiss** ("Opposition").

Jurisdiction

The "UNITED STATES OF AMERICA" ("USA"), an unknown entity with the Pleading by a Steven P. Johnson ("Johnson) has not challenged the jurisdiction of the

Vernons. Johnson starts off the "UNITED STATES MOTION AND MEMORANDUM TO DISMISS COUNTERCLAIM-PLAINTIFFS' COUNTERCLAIM" ("Motion to Dismiss") with an *ispe dixit* pontification of "United States of America ("United States")" which is fraud upon the Court.

UNITED STATES OF AMERICA v. United States

In the ***unpublished case*** of *Doe v. State of Alaska*, 122 F.3d 1070 (9th Cir. 1997) although not to be cited, we find first this under the "Analysis" of the use of pseudonyms "We review for abuse of discretion whether to allow pseudonymous filing. *See James v. Jacobson,* 6 F.3d 233, 239 (4th Cir.1993); *Doe v. Frank,* 951 F.2d 320, 323 (11th Cir.1992)." These are adjudged decisions from two other circuits, being the 4th Circuit and the 11th Circuit. And further in *State of Alaska, supra.*, "We [9th Circuit] will reverse if a court's decision is unsupported by the facts or the law", citing *In re Sternberg,* 85 F.3d 1400, 1405 (9th Cir.1996), to wit:

> A trial court may abuse its discretion in several ways. ***A trial court abuses its discretion if it fails to apply the correct law or if it bases its decision on a clearly erroneous finding of a material fact.*** *Cox,* 904 F.2d at 1401;*Engleson v. Burlington N. R.R. Co.,* 972 F.2d 1038, 1043 (9th Cir.1992). ***A trial court also abuses its discretion if it applies the correct law to facts which are not clearly erroneous but rules in an irrational manner.*** *Id.,* 972 F.2d at 1043. ***[Emphasis added]***

And further in *State of Alaska, supra.,* there is a presumption that a Plaintiff must file in their true name with constitutional dimensions to assure fair factual findings and legal conclusions, to wit:

> ***There is a presumption that a plaintiff must file the complaint in his or her own name.*** *Coe v. United States Dist. Court,* 676 F.2d 411, 415 (10th Cir.1982); Fed.R.Civ.P. 10(a). ***The presumption has a constitutional dimension: the First Amendment gives the public a right of access to judicial processes and records.*** *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 576 (1980); *Doe v. Stegall,* 653 F.2d 180, 185 (5th Cir.1981). ***This access helps to assure fair factual findings and legal conclusions; discourages corruption, bias and perjury; enhances public confidence in the administration of law;*** and provides therapeutic and cathartic value to the community. *See* Joan Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep Their Identities Confidential?,* 37 Hastings L.Rev. 1, 18-20 (1985). ***[Emphasis added]***

And further in *State of Alaska, supra.,* "A litigant may overcome the presumption by demonstrating a social interest in favor of protecting his identity. *Coe*, 676 F.2d at 418; *Doe v. Goldman,* 169 F.R.D. 138, 139 (D.Nev.1996)", which as a *matter of law* can have no application to any lawful and legal government against any of the citizens of the several States. Of course a case could be made if the "UNITED STATES OF AMERICA" ("USA"), who or whatever it is by and with the assistance of the IRS and the Department of Justice is one of three of the "United States" yet to be undisclosed along with one of these "United States" relationship to the USA as pronounced *Hooven v. Allison Co.*, 324 U.S. 652, 671, 672 (1945), to wit:

> The term 'United States' may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, ***672** or it may be the collective name of the states which are united by and under the Constitution.

In the cited Case of Rowe v. Burton, 884 F.Supp. 1372 (D. Alaska 1994) by Judge John Sedwick we find the following.

In *Rowe, ibid. at 1385* Sedwick pronounces that "Generally, a person is required to disclose one's identity to commence a lawsuit" and ". . . a party can initiate a lawsuit by filing a complaint. Fed. R.Civ.P." And further in *Rowe, ibid at 1385* "Rule 10(a) requires that the complaint state the title of the action, which "shall include the names of all the parties.""

Sedwick continues in *Rowe, ibid at 1385* to state that ". . . lawsuits are public events and the public has a legitimate interest in know the facts involved in them. Among those facts is the identity of the parties." Citing *Doe v. Deschamps,* 64 F.R.D. 652 (D.Mont. 1974). Sedwick continues with courts have recognized exceptions to the

requirement in limited "matters of a sensitive and highly person nature" citing *Doe v. Deschamps,* 64 F.R.D. at 653; *see also* ***1386** *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe,* 599 F.2d 707 (5th Cir.1979).

Sedwick continues on in *Rowe, ibid at 1386* to cite issues that have been acceptable to use pseudonyms, to wit:

> Plaintiffs have been allowed to proceed anonymously in matters involving ***abortion,***[FN29] ***birth control,***[FN30] ***welfare cases involving illegitimate children,***[FN31] and ***homosexuality*** [FN32]. Such situations share a need to shelter the anonymous plaintiff from "***social stigmatization, real danger of physical harm, or where the injury litigated against would occur as a result of the disclosure of the plaintiff's identity.***" *Doe v. Hallock,* 119 F.R.D. 640, 644 (S.D.Miss.1987).
>
> FN29.*Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Doe v. Deschamps,* 64 F.R.D. 652 (D.Mont.1974).
> FN30.*Poe v. Ullman,* 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961).
> FN31.*Doe v. Carleson,* 356 F.Supp. 753 (N.D.Cal.1973).
> FN32.*Webster v. Doe,* 486 U.S. 592, 108 S.Ct. 2047, 100 L.Ed.2d 632 (1988); *Doe v. United Serv. Life Ins. Co.,* 123 F.R.D. 437 (S.D.N.Y.1988); *Doe v. Chafee,* 355 F.Supp. 112 (N.D.Cal.1973).

In this instant Case there no issues of ***abortion, birth control, welfare cases involving illegitimate children or homosexuality***. Is the USA involved in any of these or "***social stigmatization***" by it's unlawful and illegal actions?

Sedwick continues in *Rowe, ibid at 1386* "These interests are rendered meaningless if discarded when controversial issues are raised by litigation. For this reason, courts are reluctant to grant a litigant a "cloak of anonymity." Citing "*United States v. Doe,* 655 F.2d 920, 922, n. 1 (9th Cir.1981); *Doe v. Rostker,* 89 F.R.D. 158, 162 (N.D.Cal.1981) ("There must be a strong social interest in concealing the identity of the plaintiff.")"

Sedwick continues in *Rowe, ibid at 1386*, to wit:

> **Courts have refused requests to proceed anonymously in actions involving economic matters,**[FN33] **challenges to selective service registration,**[FN34] **sexual harassment under Title VII,** [FN35] **termination of employment due to alcoholism,**[FN36] **and AIDS** [FN37].
>
> FN33. *Doe v. Deschamps,* 64 F.R.D. 652 (D.Mont.1974).
> FN34. *Doe v. Rostker,* 89 F.R.D. 158 (N.D.Cal.1981).

> FN35. *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe,* 599 F.2d 707 (5th Cir.1979); *Doe v. Hallock,* 119 F.R.D. 640 (S.D.Miss.1987).
> FN36. *Doe v. Frank,* 951 F.2d 320 (11th Cir.1992).
> FN37. *Doe v. Prudential Ins. Co. of America,* 744 F.Supp. 40 (D.R.I.1990).
> ***[Emphasis added]***

Sedwick did not address the issue of the appearance of a lawful government under the "cloak of anonymity", but as the issues listed by Sedwick are minutiae when compared to the purported lawful and legal taxation, the taking of private property by someone or something yet unidentified and the constitutional secured rights of the Petitioner.

In the adjudged decision of *Roe v. State of New York*, 49 F.R.D. 279, 281, 282 (S.D. N.Y. 1970) *at 281* that under Fed. R. Civ. P. 3 provides "A civil action is commenced by filing a complaint with the court." And further *at 281*, Fed. R. Civ. P. 10(a) requires that in the complaint "the title of the action shall include the names of all of the parties." ***The "United States" is not listed in the Complaint as one of the parties***.

And further in *Roe, ibid. at 281* "It is concluded that no action has been commenced by the filing of this complaint and therefore that this Court has nothing before it on which to act." And further in *Roe, ibid. at 282* a fictitious party should notify the court and secure the court's consent with no harm being done to the public interest, to wit:

> ***To obviate any possibility that the parties and the issues raised are fictitious*** and that the jurisdiction of the court is being invoked to decide moot questions, a plaintiff who desires to use a name other than his own should, ***before the case is presented in court, acquaint the court of his desires, establish the fact that the parties and issues are real although the names used are fictitious, and secure the court's consent, as was done in these cases.*** The ***privilege of using fictitious names in actions*** should be granted only in the rare case where ***the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest***.' ***[Emphasis added]***

Most conclusively, if this Complaint is founded from the authority granted of the Federal Constitution and is actually the real constitutional government in our constitutional Republic there absolutely can be no claim of protection of it's identity under any circumstances.

Clearly if there is no real party of interest in the Complaint, then the Complaint must be dismissed as was done in *Roe, ibid at 282*, to wit:

> ***If no action had been commenced by the filing of this complaint, then the subsequent disclosure of the true names of plaintiffs did not change the situation.***
> By granting the present motion, I would not wish to put form before substance or to penalize litigants for minor or technical lapses of procedure. It seems to me, however, that there is here a defect of substance. ***Sound public policy would appear to require that a complaint identify by true name at least one plaintiff if the filing is to commence an action; if the complaint fails to identify by true name at least one plaintiff then its filing is not effective to commence an action. [Emphasis added]***

In the adjudged decision of *Roe v. Bopup*, 500 F.Supp. 127, 130 (E.D. Wash. 1980) affirmed the decision in *Roe v. State of New York*, 49 F.R.D. 279, 281, 282 (S.D. N.Y. 1970), to wit:

> The decision whether to permit the use of fictitious names is one that is left to the discretion of the trial court, *Lindsey v. Dayton-Hudson Corp.*, 592 F.2d 1118, 1125 (10th Cir. 1979). There the court noted that "***identifying a plaintiff only by a pseudonym is an unusual procedure, to be allowed only where there is an important privacy interest to be recognized.***" Lindsey, supra, at p. 1125; see *Doe v. Deschamps, 64 F.R.D.* 652 (D.Mont.1974). ***[Emphasis added]***

The use of fictitious names will not be sufficient in a judgment file as held in the adjudged decision of *Buxton v. Ullman*, 156 A.2d 508, 514, 515 (Sup. Ct. Errors Conn. 1959), to wit:

> Practice Book, § 199 states, among other things, that ***'[i]n the captions of pleas, answers, etc., the parties may be described as John Doe v. Richard Roe et al., but this will not be sufficient in a judgment file, which *60 must give all the data necessary for use in drawing the execution.'*** Because of the intimate and distressing ****515** details alleged in these complaints, it is understandable that the parties who are allegedly medical patients would wish to be anonymous. ***To obviate any possibility that the parties and the issues raised are fictitious and that the jurisdiction of the court is being invoked to decide moot questions, a plaintiff who desires to use a name other than his own should, before the case is presented in court, acquaint the court of his desires, establish the fact that the parties and issues are real although the names used are fictitious, and secure the court's consent, as was done in these cases. The privilege of***

> ***using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest. [Emphasis added]***

See also *Brock v. A-1 Auto Service, Ince*, 728 A.2d 1167, 1169 (Superior Ct. Conn. 1998) on ". . . but this will not be sufficient in a judgment file, which must give all the data necessary for use in the drawing any execution that may be necessary." And further in *Brock, ibid. at 1169* "by their real names, so that they may be identified."

In the adjudged decision of *Coe v. USDC for the District of Colorado*, 676 F.2d 411, 415, 416 (10th Cir. 1982) that the Federal Rules of Civil Procedure have no means to use fictitious names or anonymous plaintiffs and the public has a right to know the real party of interest except in very unusual cases, to wit:

> ***Every pleading must contain the names of the parties thereto, if these are known.*** [FN1] ***In the federal courts it is held that the "real party in interest" is the one who, under applicable substantive law, has the legal right to bring the suit.*** Boeing Airplane Co. v. Perry, 322 F.2d 589 (10th Cir. 1963), cert. denied, 375 U.S. 984, 84 S.Ct. 516, 11 L.Ed.2d 472 (1964). ***There is no provision in the Federal Rules of Civil Procedure for suit against persons under fictitious names, and there are likewise no provisions for anonymous plaintiffs.*** In Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118 (10th Cir. 1979) this court observed, inter alia :
>
> > FN1. U.S.C.A. Rules of Civil Procedure, rule 10(a) provides: "Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties."
>
> **This use of pseudonyms concealing plaintiffs' real names has no explicit sanction in the federal rules.** Indeed it seems contrary to Fed.R.Civ.P. 10(a) ***which requires the names of all parties to appear in the complaint. Such use obviously may cause problems to defendants engaging in discovery and establishing their defenses, and in fixing res judicata effects of judgments.*** Yet the Supreme Court has given the practice implicit recognition in the abortion cases, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), and Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), with minimal discussion. Most of the cases permitting the practice have involved abortion, birth control, and welfare prosecutions involving abandoned or illegitimate children. We have found only a few cases where the propriety of the technique was discussed.
>
> **Doe v. Deschamps, 64 F.R.D. 652 (D.Mont.1974) cites most of the cases. It holds that the public generally has a right to know, refuses to permit it except in unusual cases, and rules that it will not be permitted in an action involving plaintiff's future professional and economic life. *416***Roe v. State of New York,* 49 F.R.D. 279 (S.D.N.Y.1970)**, concluded that where only fictitious names were used for plaintiffs the filing of the complaint would be ineffective to commence an action. It recognized**

> **that if an action were commenced properly, the court could issue protective orders in appropriate cases to shield the identity of the plaintiffs.** *Roe v. Ingraham*, 364F.Supp. 536, 541 n.7 (S.D.N.Y.1973), **recognized the procedure as proper where "if plaintiffs are required to reveal their identity prior to the adjudication of the merits of their privacy claim, they will already have sustained the injury which by this litigation they seek to avoid."** *Doe v. Boyle*, 60 F.R.D. 507 (E.D.Va.1973), ***refused to permit a suit under the tax laws to be carried on in a fictitious name because it involved personal privileges under the Fifth Amendment. Additionally the court was concerned that after judgment numerous persons might claim to be John Doe. [Emphasis added]***

In the adjudged decision of *M.M. v. Zavaras*, 939 F.Supp. 799, 801(D.Colo 1996) clearly pronounces that there is no authority for an

> . . . unidentified plaintiff attempting to use a pseudonym and ***completely ignores both controlling Tenth Circuit decisions*** and published decisions of this court. E.g., *Coe v. United States District Court*, 676 F.2d 411 (10th Cir.1982); *Doe v. United States Dep't. of Justice*, 93 F.R.D. 483 (D.Colo.1982); *Lorenz v. United States Nuclear Regulatory Comm'n*, 516 F.Supp. 1151 (D.Colo.1981). The use of pseudonyms concealing plaintiffs' real names has no explicit sanction in the federal rules. Indeed it seems contrary to Fed.R.Civ.P. 10(a) which requires the names of all parties to appear in the complaint. 676 F.2d at 411. Moreover, t***here is no express congressional grant of a right to proceed anonymously. [Emphasis added]***

The "real party in interest" under substantive law is the only one with a legal right for relief as pronounced *In re Comcoach Corp.* 698 F.2d 571, 573 (2nd Cir. 1983), to wit:

> **Generally, the "real party in interest" is the one who, under the applicable substantive law, has the legal right which is sought to be enforced or is the party entitled to bring suit.** *Coe v. United States District Court for the District of Colorado*, 676 F.2d 411, 415 (10th Cir.1982); *see Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc.*, 630 F.2d 250, 256-57 (5th Cir.1980); *Virginia Electric & Power Co. v. Westinghouse ElectricCorp.*, 485 F.2d 78, 83 (4th Cir.1973), *cert. denied*,415 U.S. 935, 94 S.Ct. 1450, 39 L.Ed.2d 493 (1974); *Weniger v. Union Center Plaza Associates*, 387 F.Supp. 849, 855 (S.D.N.Y.1974); *see generally* 3A J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 17.07 (2d ed. 1979); 6 C. Wright & A. Miller, *Federal Practice and Procedure* §§ 1543-1544 (1971). ***[Emphasis added]***

In the adjudged decision of *Doe v. Boyle*, 60 F.R.D. 507 (E.D. Virginia 1973) that the 5th Amendment protects only real people in a tax case and *as a matter of law* the inverse is also true as the 5th Amendment can be invoked only in issues with a lawful government and not fictions or pseudonyms, to wit:

> **The Fifth Amendment protects people, not aliases. The standard for application of the Fifth Amendment privilege is whether 'the claimant is confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination.'** *Marchetti v. United States* 390 U.S. 39, 53, 88 S.Ct. 697, 705, 19

> L.Ed.2d 889 (1968). ***While the Court accepts the representation of plaintiff's counsel that plaintiff is indeed confronted by a real hazard of incrimination, said representation could not alone, in view of the personal nature of the Fifth Amendment right carry plaintiff's burden of proof on this issue.*** Should the Court proceed in this matter in its present posture, and should plaintiff prevail, numerous persons could appear after judgment claiming to be John Doe. ***That prospect offends the sacred nature of the Fifth Amendment guaranty of personal liberty. [Emphasis added]"***

Perhaps the Department of Justice should by *ipse dixit* pontification amend the Federal Constitution arising under Article II section 1 clause 8 replacing "United States" with "UNITED STATES OF AMERICA", to wit:

> Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--``I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the ***United States***, and will to the best of my Ability, preserve, protect and defend the Constitution of the ***United States***." ***[Emphasis added]***

In the adjudged Case of *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 366 F.Supp. 51, 56 (D.C. D.C. 1973), to wit:

> One of the four statutory bases of jurisdiction cited by plaintiffs is 28 U.S.C. § 1345 which reads:
> ***§ 1345. United States as plaintiff***
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings ***commenced by the United States***, or by any agency or officer thereof expressly authorized to sue by Act of Congress.
> Plaintiffs have disclaimed any attempt to classify themselves as an "agency or officer" within the meaning of this section. ***Rather they purport to bring suit in the name of the United States.*** Reference, however, to common practice and related statutory provisions belies the soundness of such a claim.Title 28 U.S.C. § 516, in language similar to that of § 1345, ***reserves to the Attorney General and Department of Justice authority to litigate as United States. § 516. Conduct of Litigation reserved to Department of Justice***
> Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.
>
> While this section does not require a congressional litigant to be represented by the Justice Department, it does deny such a ***litigant the right to sue as the United States*** when jurisdiction derives from § 1345.[FN8] The practice has never ****57*** been otherwise and the two cases cited by plaintiffs do not so hold.[FN9]Section 1345 is simply inapplicable here. ***[Emphasis added]***

In the adjudged decision of *U.S. v. American Tel. & Tel. Co.*, 551 F.2d 384, 388, 389 " (D.C. D.C. 1976) "The complaint alleges jurisdiction under 28 U.S.C. § 1345, which gives jurisdiction over suits brought by the United States. Although this suit was

brought in the ***name of the United States*** against AT&T, . . ." citing *Nixon, supra.*

In the adjudged decision of *Brooks v. Nez Perce County*, 394 F.Supp. 869, 872 (D.C. Idaho 1975) "the right to sue, does not alter the fact that this action was not ***'commenced by the United States'*** . . ." citing *Nixon, supra.*

This case clearly and succinctly states in plain English "***commenced by the United States***" under 28 U.S.C. § 1345 or under 28 U.S.C. § 516 the "reserves to the Attorney General and ***Department of Justice authority to litigate as United States***. § 516." ***[Emphasis added]***

The Court has jurisdiction over this actions pursuant to I.R.C. § 7402 and 28 U.S.C. §§ 1340 and 1345" in IRS cases.

In the act of Congress codified at 28 U.S.C. § 1345 states that the "district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States," to wit:

> **Sec. 1345. *United States as Plaintiff***
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings ***commenced by the United States*, or by any agency or officer thereof expressly authorized to sue by Act of Congress.** ***[Emphasis added]***

Even though this is an "Act of Congress" and not a "Law of the United States", it is indisputable that only "United States" is a Plaintiff and not "UNITED STATES OF AMERICA" under 28 U.S.C. §§ 516 or 1345.

Including, but not limited to the facts and issues of law that Congress' statutory authority to commence a civil case under 28 U.S.C. § 1345 is authorized only as the "United States."

As an Offer of Proof as published in the Federal Register of the "Final rule" of "Department of Justice" being 59 FR 39910-39931 of August 4, 1994 under the authority

of the Attorney General of the United States being Janet Reno including but not limited to published 59 FR 39915 being, to wit:

> Title 28 of the United States Code grants the Attorney General and the Department a variety of law enforcement powers including the power (through intermediary officials) to conduct grand jury proceedings or any other kind of ***civil or criminal legal proceeding***; ***to conduct litigation***, and to "secur[e] evidence" therefor; to detect and prosecute crimes; ***and to prosecute "civil actions, suits, and proceedings in which the United States is concerned***." 28 U.S.C. 515(a), 516, 533, 547; see 28 U.S.C. 509, 510. The Attorney General is also authorized to "supervise all litigation" to which the ***United States is a party*** and to direct United States Attorneys and other subordinate attorneys in the "discharge of their respective duties." 28 U.S.C. 519. These provisions grant the Attorney General extremely broad authority to supervise the enforcement of federal law.
>
> ***In order for a Department regulation to have the force and effect of law***, it must rest on a reasonable construction of the ***statutes delegating the authority to promulgate it and must not in substance contradict any act of Congress.*** See, e.g., *NLRB v. United Food and Commercial Workers Union, Local 23*, 484 U.S. 112, 123 (1987); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699-700 (1989). ***These rules represent the reasoned judgment of the Attorney General and of the Department*** about the lawful authority of federal lawyers effectively to investigate and prosecute crimes. ***[Emphasis added]***

This clearly as published at 59 FR 39915 binds the Department of Justice only to all the acts of Congress of criminal or civil suits only in "which the ***United States*** is a party" and in "which the ***United States*** is concerned." This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing.

In the acts of Congress in 28 U.S.C. § 515(a) – "Authority for legal proceedings; commission, oath, and salary for special attorneys" from 59 FR 39915 the DoJ Attorneys are bound to what is "authorized by law to conduct" and to "conduct any kind of legal proceeding, civil or criminal", to wit:

> **(a)** The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, ***conduct any kind of legal proceeding, civil or criminal,*** including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys ***are authorized by law to conduct,*** whether or not he is a resident of the district in which the proceeding is brought. ***[Emphasis added]***

In the acts of Congress in 28 U.S.C. § 516 "Conduct of litigation reserved to Department of Justice" from 59 FR 39915 the DoJ Attorneys "Except as otherwise

authorized by law, the conduct litigation in which the United States, an agency, or officer thereof is a party", to wit:

> Except as otherwise authorized by law, **the conduct of litigation in which the *United States*, an agency, or officer *thereof is a party,*** or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General. ***[Emphasis added]***

In the acts of Congress in 28 U.S.C. § 533 "Investigative and other officials; appointment" from 59 FR 39915 the "Attorney General may appoint officials – to detect and prosecute crimes against the United States;", to wit:

> The Attorney General may appoint officials--
> **(1) to detect and prosecute crimes against the *United States*;**
> **(2)** to assist in the protection of the person of the President; and
> **(3)** to assist in the protection of the person of the Attorney General.
> **(4)** to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General.
> This section does not limit the authority of departments and agencies to investigate ***crimes against the United States*** when investigative jurisdiction has been assigned by law to such departments and agencies.

This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing.

In the acts of Congress in 28 U.S.C. § 547 "Duties" from 59 FR 39915 "Except as otherwise provided by law, each United States attorney shall (1) prosecute for all offenses against the United States (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned", to wit:

> **Except as otherwise *provided by law, each United States attorney***, within his district, shall--
> **(1) *prosecute for all offenses against the United States*;**
> **(2) prosecute or defend, for the Government, all civil actions, suits or proceedings *in which the United States is concerned*;**
> **(3)** appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or **other officers of the revenue** or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;
> **(4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law,** unless satisfied on investigation that justice does not require the proceedings; and
> **(5)** make such reports as the Attorney General may direct. ***[Emphasis added]***

This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing.

Directly from the published Federal Register of 59 FR 39915, to wit:

> The Attorney General is also authorized to "supervise all litigation" to which the ***United States is a party*** and to direct United States Attorneys and other subordinate attorneys in the "discharge of their respective duties." 28 U.S.C. 519. ***[Emphasis added]***

This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing.

In the acts of Congress in 28 U.S.C. § 519 "Supervision of litigation" from 59 FR 39915 the "Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party . . .", to wit:

> **Except as otherwise authorized by law**, the Attorney General shall supervise all litigation ***to which the United States***, an agency, or officer ***thereof is a party***, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties. ***[Emphasis added]***

This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing.

Administrative Procedures Act

Even in the unconstitutional Administrative Procedures Act of 1946 of June 11, 1946 at 60 Stat. 238-244 and the unconstitutional Administrative Act of 1966 part of Title 5 U.S.C. of September 6, 1966 at 80 Stat. 378-398 codified and included in 5 U.S.C. Chapters 5, 6, 7, 8 and 9 clearly state only the "United States."

At 5 U.S.C. § 501 – Advertising practice; restrictions, to wit:

> "An individual, firm, or corporation practicing before an agency of the ***United States*** may not use the name of a Member of either House of Congress or of an individual in the service of the ***United States*** in advertising the business. ***[Emphasis added]***

At 5 U.S.C. § 502 ". . . an agency of the United States."

At 5 U.S.C. § 504 – Cost and fees of parties – "to a prevailing party other than the ***United States***, . . ." *Ibid*, "When the ***United States*** Appeals the underlying merits of the adversary adjudication . . . " *Ibid*, "(C) "adversary adjudication" means (i) an adjudication under section 554 of this title in which the position of the ***United States*** is represented by counsel or otherwise, . . ." *Ibid*, "**2)** If a party other than the ***United States*** is dissatisfied with a determination of fees and other expenses made under subsection (a), . . ." ***[Emphasis added]***

At 5 U.S.C. § 551 – Definitions - **(1)** "**agency**" means each authority of the ***Government of the United States***, . . ." ***[Emphasis added]***

At 5 U.S.C. § 552 – Public information; agency rules, opinion, orders, records and proceedings "**(E)(i)** The court may assess against the ***United States*** reasonable attorney fees and other litigation costs . . ." *Ibid*, "(F)(i) . . . assesses against the ***United States*** reasonable attorney fees and other litigation costs . . ." ***[Emphasis added]***

At 5 U.S.C § 552a – Records maintained on individuals "**(13)** the term "Federal personnel" means officers and employees of the ***Government of the United States***, . . ." *Ibid*, "**(7)** to another agency or to an instrumentality of any governmental jurisdiction within or under the ***control of the United States*** for a ***civil or criminal*** law enforcement activity if the activity is ***authorized by law*** . . ." *Ibid*, "(g)(1) Civil Remedies, -- When ever any agency * * * **(B)** The court may assess against the ***United States*** reasonable attorney fees and other litigation costs * * * (4) . . . the ***United States*** shall be liable to the individual in an amount equal to the sum of". ***[Emphasis added]***

At 5 U.S.C. § 552b – Open Meetings * * * "(i) * * * In the case of assessment of costs against an agency, the costs may be assessed by the court ***against the United States***.

At 5 U.S.C. § 576 – Enforcement of arbitration agreements ". . . no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the ***United States*** or that the ***United States*** is an indispensable party." ***[Emphasis added]***

At 5 U.S.C. § 580 – Arbitration awards " (c) . . . shall be dismissed nor shall relief therein be denied on the grounds that it is against the ***United States*** or that the ***United*** States is an indispensable party." ***[Emphasis added]***

At 5 U.S.C. § 594 – Organization of the Conference – "(12) . . . ***For purposes of Federal income***, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the ***United States***;

5 U.S.C. § 601 – Definitions "(7)(A)(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or ***employees of the United States***; or (i) * * * . . . or ***employees of the United States*** which are to be used for general statistical purposes; . . ." ***[Emphasis added]***

At 5 U.S.C. § 603 – Initial regulatory flexibility analysis "(a) * * * or publishes a notice of proposed rulemaking for an interpretative rule involving the ***internal revenue laws of the United States*** . . . * * * In the case of an interpretative rule involving the ***internal revenue laws of the United States***, . . . " ***[Emphasis added]***

At 5 U.S.C. § 604 – Final regulatory flexibility analysis – "(a) * * * promulgates a final interpretative rule involving the ***internal revenue laws of the United States*** as described in section 603(a), . . ." ***[Emphasis added]***

At 5 U.S.C. § 701 – Definitions "(b)(1) **(1)** "agency" means each authority of the ***Government of the United States*** . . ." ***[Emphasis added]***

At 5 U.S.C. § 702 – Right of review, to wit:

> An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the ***United States*** or that the ***United States is an indispensable party.*** The ***United States*** may be named as a ***defendant*** in any such action, and a judgment or decree may be entered against the ***United States***: ***[Emphasis added]***

At 5 U.S.C. § 703 - Form and venue of proceedings "If no special statutory review proceeding is applicable, the action for judicial review may be brought against the ***United States***, . . ."

5 U.S.C. § 907 – Effect of other laws, pending legal proceedings, and unexpended appropriations "(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other ***officer of the United States*** . . . "***[Emphasis added]***

This precludes the "UNITED STATES OF AMERICA" as a real party of interest or standing. Only the "United States" is a real party of interest and has standing in the Administrative Procedures Act of 1946 and 1966 and there is no "UNITED STATES OF AMERICA.

Fair Debt Collection Act

The Crime Control Act of 1990 is unconstitutional with the addition of Chapter 176 passed on November 29, 1990 starting at 104 Stat. 4933 and specifically including but not limited to the definitions of the following:

At 104 Stat 4934

"(2) '**Court**' means any court created by the Congress of the United States, excluding the United States Tax Court."; and,

At 104 Stat 4935

"(15) '**United States**" means

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States."

Arising under the Federal Constitution the "United States" was created and established with no legislative Power granted to Congress to define "United States" to include such entities as an "agency" that under the APA at 5 U.S.C. § 551(10)(A) . . . "other condition affecting the freedom of a person" and "(B) withholding of relief" with 5 U.S.C. § 551(11)(A) "relief" . . . "remedy." This is in reality is an act of Treason by Congress, as Congress is prohibited from transferring the unalienable rights secured in the Federal Constitution and the Bill of Rights to any Federal Corporation, agency, department, commission, board, or other entity of the United including an instrumentality of the United States.

And further it is unconstitutional for Congress to define the term "Court" to include ***any court*** created by the Congress of the United States. Congress is bound to establish Courts of the United States in the Federal Constitution arising under Article III in all Cases in Law and Equity exercising the judicial Power of the United States under the Authority of the United States. This was accomplished in the Judiciary Act of 1789 at 1 Stat. 73 *et seq.* and this stands today and has never repealed. See also *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816).

And further the ***holding*** of the Supreme Court of the United States in *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 671, 672 (1945) on the term "United States" is only used in three senses, to wit:

> The term '***United States***' may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends,*672 or ***it may be the collective name of the states which are united by and under the Constitution. [Emphasis added]***

This pronouncement in *Hooven ibid.* clearly precludes any "UNITED STATES OF AMERICA."

Therefore, as a *matter of law* in this instant Case was not commenced by the "United States" under the statutory authority of Congress of 28 U.S.C. §§§§§§§§ 515(a), 516, 533, 547, 509, 510, 519 and 1345, which is mandatory, but with a "UNITED STATES OF AMERICA" without any statutory authority of Congress being a fiction in law and yet to be disclosed.

And further, as a *matter of law* in this instant Case even in the unconstitutional Administrative Procedures Act of 1946 of June 11, 1946 at 60 Stat. 238-244 and the unconstitutional Administrative Act of 1966 part of Title 5 U.S.C. of September 6, 1966 at 80 Stat. 380-398 codified and included in 5 U.S.C. Chapters 5, 6, 7, 8 and 9 there is no authority for the "UNITED STATES OF AMERICA" but only for the "United States."

And further, the definition of the "United States" to include other fictional entities such as "agency" in the Fair Debt Collection Act Chapter 176 is not only unconstitutional but precludes "UNITED STATES OF AMERICA" as a real party of interest represented by the DoJ.

Therefore, this instant Case should be dismissed with prejudice as *this Court* lacks the mandatory statutory jurisdictional grant as "jurisdiction fails" if the cause is not

one described by any jurisdictional statute." See *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 366 F.Supp. 51, 56 (D.C. D.C. 1973) FN 5 for holdings of the adjudged decisions of the Supreme Court of the United States.

Including, but not limited to the facts and issues of law that no fictitious entity or pseudonyms as a *matter of law* can have standing including when not even listed in the Complaint as one of the parties; therefore, this instant Case should be dismissed with prejudice.

Venue

Congress requires in 26 U.S.C. § 6091 for an individual to file a return in the "*internal revenue district*", being the venue. There are no "*internal revenue districts*" or "*district directors*" since March 9, 2001.

As held in *Rush v. United States*, 256 F.2d 862, 864 (10th Cir. 1958) "***Internal revenue districts and judicial districts do not coincide.***[FN4]" - FN4. Cf. 28 U.S.C. §§ 81-131 and 21 Fed.Reg.pp. 10418-10419.

Brief excerpt of the history of the "internal revenue districts" mandated to be established by 26 U.S.C. § 7621 was published in the Federal Register September 19, 1951 in 16 FR 9499-9502 and at 16 FR 9501 found today in 26 CFR § 301.7621, to wit:

> For delegation to the Secretary of authority to prescribe internal revenue districts for the purpose of administering the internal revenue laws, *see Executive Order No. 10289, dated September 17, 1951 (16 FR 9499), as made applicable to the Code by Executive Order No. 10574, dated November 5, 1954 (19 FR 7249). [Emphasis added]*

Incorporated in the establishment of the "Internal Revenue Districts" is 3 U.S.C. § 301 (delegation by the President to Secretary of the Treasury certain functions), Executive Order No. 10289 and Executive Order 10574.

The history of the Treasury Department Orders ("T.D.O.") is as follows on the establishment of the "Internal Revenue Districts" and "District Directors", to wit:

1. T.D.O. 150-01 was published May 12, 1986 establishing *geographic areas* for the "Internal Revenue Districts" and a "District Director of the Internal Revenue" and published March 19, 1986 in the Federal Register at 51 FR 9571; and,
2. T.D.O. 150-01 dated September 28, 1995 establishing *geographic areas* and "Internal Revenue Districts" and a "Director" for each district office and published October 10, 1995 in the Federal Register at 60 FR 52726; and,
3. T.D.O. 150-02 dated March 9, 2001 canceled T.D.O. 150-01 of September 28, 1995 "Regional and District Offices of the Internal Revenue Service" with the result being ***there no longer are any*** "Internal Revenue Districts" or "District Directors." T.D.O. 150-02 of March 9, 2001 has not been published in the Federal Register.

The excerpt from 26 U.S.C. § 6091(b), to wit:

> (b) Tax returns.--In the case of ***returns*** of tax required under authority of part II of this subchapter—
> (1) Persons other than corporations.--
> (A) General rule.--Except as provided in subparagraph (B), a ***return*** (other than a corporation return) ***shall be made to the Secretary***--
>
> (i) in the ***internal revenue district*** in which is located the legal residence or principal place of business of the person making the return, or
> (ii) at a service center serving the ***internal revenue district*** referred to in clause (i), as the Secretary may by regulations designate. ***[Emphasis added]***

And as published Friday, February 23, 1973 in the Federal Register at 38 FR 4954-55 (26 CFR § 601.101(a)) "***Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue***." ***[Emphasis added]*** under the authority of 5 U.S.C. § 301 (federal employees) and 5 U.S.C. § 552 (APA).

The IRS has disclosed the elimination of the "*internal revenue districts*" and the "*district directors*" in *only* two places, the first as published in the Federal Register on September 16, 2004 in 69 FR 55743-47. By removing from the Part 1 regulations of 26 CFR § 1.6091-2 all references to the "*district director*" and replacing this typically with

"any person assigned the responsibility to receive returns in the local *Internal revenue service office*"; and, also in Part 1 regulations of 26 CFR § 1.6091-2 removed all references to the "*internal revenue district*" and other combinations of "*district director of the internal revenue district*" and replaced it with various other verbiage.

Also, as published in the Federal Register on September 16, 2004 in 69 FR 55743-47, changes in Part 1 regulations of 26 CFR § 1.6091-4 were made and all references to the "*director*", "*district director*" and "*internal revenue district*" were removed and replaced with various other verbiage.

Also, as published in the Federal Register on September 16, 2004 in 69 FR 55743-47 changes in Part 301 regulations for federal employees of 26 CFR § 301.6091-1(b)(1) were made by removing "the *district director* (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the *internal revenue district of such director*) for the *internal revenue district* in which it is located" and replacing it with other verbiage; and, in (b)(2) removing "the *district director* (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the *internal revenue district* of such *director*) for the *internal revenue district* in which is located" and replacing it with other verbiage.

As it was published in the Federal Register on July 20, 2007 in 72 FR 39737-40, clearly evidences the elimination of the "internal revenue district" and the "district directors" with the following excerpts, to wit:

> *@ 72 FR 39738 - **The offices of the district director** **and Special Procedures** **were eliminated** by the **IRS reorganization implemented pursuant to the IRS Restructuring and Reform Act of 1998, Public Law 105-206** (RRA 1998), creating uncertainty as to the timeliness of notices and requests under these provisions.*

> *@ 72 FR 39738* - Treas. Reg. § 301.7425-3(a)(1) specifies that notice "shall be given, in writing by registered or certified mail or by personal service * * * to the ***district director*** (marked for the attention of the chief, special procedures staff) for the ***Internal Revenue district in which the sale is to be conducted.***" The regulation further provides that such notice of sale is not effective if given to a ***district director*** other than the ***district director for the Internal Revenue district*** in which the sale is to be conducted.
>
> ***In light of the IRS reorganization subsequent to RRA 1998, the district and special procedures offices referenced in the regulations no longer exist.***
>
> *@ 72 FR 39738* - As is the case with notices of nonjudicial sale, the regulations specify that the request for return of wrongfully levied property be addressed to the ***district director*** (marked for the attention of the Chief, Special Procedures Staff) for the ***Internal Revenue district in which the levy is made***. Treas. Reg. § 301.6343-2(b). ***The elimination of these offices by the IRS reorganization can similarly result in misdirected requests***. An amendment is necessary to assist the public in filing timely requests with the proper office.
>
> In order to account for the IRS's current organizational structure and to allow for future reorganizations of the IRS, the temporary regulations ***remove the title "district director"*** *throughout Treas. Reg. §§ 301.7425-3 and 301.6343-2.* ***The title is not replaced with any specific official or office. [Emphasis added]***

The "District Director" clearly was eliminated by other publications in the Federal Register and IRS was aware of the impending elimination as published September 26, 2000 in the Federal Register at 65 FR 57755-57763 as a Withdrawal, Notice of Proposed Regulations and Public Hearing not in compliance with 5 U.S.C. § 553 and *@ ibid.* 65 FR 57758 "Finally, because the position of the ***district director will be eliminated in the restructuring of the IRS***, the proposed regulations substitute "the Commissioner" for various references to the ***district director*** in § 1.1502-77."

In the Final and temporary Rule published January 3, 2006 in the Federal Register at 71 FR 11-16 *@ 11 ibid.* "[R]emove all references to an IRS district director, as that position no longer exists within the IRS" * * * *@ 13 Ibid.* "[R]evise the regulations under section 6302 to remove all references to an IRS district director, a position that no longer exists in the IRS."

In the Final and temporary Rule published August 27, 2007 at 72 FR 48933-48936 *@ 48933 ibid.* "The portions of the document that are final regulations provide

technical revisions that ***remove all references to IRS district direc***tor and the service center director, as those positions ***no longer exist within the IR***S. The offices of the ***district director*** and service center director ***were eliminated*** by the IRS reorganization implemented pursuant to the IRS Reform and Restructuring act of 1998."

In the ***Proposed Rule*** published April 17, 2008 in the Federal Register at 73 FR 20877-20882 @ *20879 Ibid.* "In addition, the proposed regulations remove all references to Internal Revenue ***district directors***, ***as these positions were eliminated*** by the Internal Revenue Service reorganization implemented pursuant to RRA 1998." And further this isn't a substantive regulation as stated @ *20879 Ibid.* "It also has been determined that section 553(b) of the Administrative Procedure act (5 U.S.C. chapter 5) ***does not apply to these regulations . . .***"

In the Final Rule and removal of temporary regulations published July 8, 2008 in the Federal Register at 73 FR 38915-17 @ *38916* "The offices of the ***district director*** and Special Procedures ***were eliminated*** by the IRS reorganization implemented pursuant to the IRS Restructuring and Reform Act of 1998, Public Law 105-206 (RRA 1998), creating uncertainty as to the timeliness of notices and requests under these provisions." And further this isn't a substantive regulation as stated @ *38916 Ibid.* "It also has been determined that section 553(b) of the Administrative Procedure act (5 U.S.C. chapter 5) does not apply to these regulations . . ."

The IRS is in direct violation of the delegated authority under 26 U.S.C. § 6091 requiring an individual to file a return in an "internal revenue district" as published in the Federal Register on January 22, 1965 in 30 FR 704-705 for 26 CFR § 1.6091-4 to wit:

> § 1. 6091-4 Exceptional cases.
> (a) Permission to file in office other than required office. (1) The Commissioner may permit the filing of any income tax return required to be made under the provisions of

> subtitle A or F of the Code, or the regulations in this part, *in any Internal Revenue Service office*, *notwithstanding* the provisions of paragraphs (1) and (2) of section *6091(b)* and *§§ 1. 6091-1 to 1. 6091-3, inclusive.*

Excerpt from 1.6091-4: "Notwithstanding [in spite of] the provisions of paragraphs (1) and (2) of section *6091(b)* and *§§ 1. 6091-1 to 1. 6091-3, inclusive."* to file a return in an "*internal revenue district*" ***only,*** the IRS has stated that what Congress mandates in 6091(b) ***isn't required*** and also, the changes in the 1.6091-1 to 1.6091-3 really don't matter.

There are other parts of Title 26 Code and of Title 26 CFRs where the ruse of the "internal revenue districts" and the "district director" remain unchanged even though non-existent. The IRS, Commissioner of Internal Revenue and the Secretary of the Treasury illegally and unlawfully perpetrate this. The *Public Statutes at Large* of 49 Stat. 500-503 of 1935, being the Federal Register Act, and by the *Public Statutes at Large* of 60 Stat. 237-244 of 1946, being the Administrative Procedure Ac, mandate to disclose in the Federal Register rules and regulations *"having general applicability and legal effect"* and as required "*by act of* Congres"s [49 Stat. 500-503] and *"substantive rules adopted as authorized by law"* [60 Stat. 237-244 codified at 5 U.S.C. § 552(a)(1)] and to also include all interpretative and policies of the IRS.

As both, the *"**internal revenue districts**"* being the ***venue*** are non-existent and eliminated; and, with ***no office*** *with "**district directors**"* are non-existent and eliminated, flows *a fortiori* invoking the maximum *lex non cogit ad impossibilia (*the law does not compel the doing of impossibilities*) and impotentia excusat legem (*the impossibility of doing what is required by the law excuses from the performance*),* i.e. as there is no "venue" or "office" wherein to file a return. Therefore it is not a crime and no civil suit

can be maintained to not file a return. This then precludes all civil and criminal actions by the IRS, the DoJ, "UNITED STATES OF AMERICA" and the "United States."

In the adjudged decision of *Akins v. Adams*, 164 S.W. 603, 608 (St. Louis Ct. Appeals 1914), to wit:

> "*Impotentia excusat legem.*" No one (not even a judge) is bound to do what is impossible. *Strother v. Barrow*, 246 Mo. loc. cit. 254, 151 S. W. 960.

In the adjudged decision of *Strother v. Barrow*, 151 S.W. 960, 964 (Sup. Ct Mo. 1912), to wit:

> As the impossible excuses persons, so it excuses judges. Some of the precepts of the law (of its very bones and framework) are: ***No one is bound to do what is impossible.*** 2 Bou. 116. ***Impossibility is an excuse in law.*** "Impotentia excusat legem." Coke, Litt. 29a. ***[Emphasis added]***

In the adjudged decision of *Somerset Importer, Ltd. V. United States*, 14 Cust.Ct. 44, 50 (1945), to wit:

> Both are confronted, in the legal aspect of the case, by a condition of facts and rest under circumstances against which each is relieved perforce of the legal maxim "*Lex non cogit ad impossibilia*" ***(the law does not seek to compel a man to do that which he can not possibly perform). It is equally within the spirit of this maxim that the law does not require a man in establishing his rights to establish that which is legally impossible for him under the circumstances to do. [Emphasis added]***

In the adjudged decision of *United States v. Shallus*, 2 U.S.Cust.App. 332, 334 (Cust. App. 1911), to wit:

> Both are confronted, in the legal aspect of the case, by a condition of facts and rest under circumstances against which each is relieved perforce of the legal maxim "*Lex non cogit ad impossibilia*" ***(the law does not seek to compel a man to do that which he can not possibly perform). It is equally within the spirit of this maxim that the law does not require a man in establishing his rights to establish that which is legally impossible for him under the circumstances to do.*** *[Emphasis added]*

As held in the adjudged decision of *Southern Sand and Gravel Co., Inc. v. Massaponax Sand & Gravel Corp.*, 133 S.E. 812, 813 (Sup. Ct. Va 1926), to wit:

> **By *jurisdiction* is meant the inherent power to decide the case; while *venue designates the particular county or city in which a court having such jurisdiction may*, in the first instance, *properly hear and determine the case. [Emphasis added]***

In the adjudged decision of *Rudick v. Laird*, 412 F.2d 16, 20 (2nd Cir. 1969), to wit:

> Thus ***venue deals with the question of which court, or courts, of those which possess adequate personal and subject matter jurisdiction, may hear the specific matter in question.*** In short, jurisdiction must first be found over the subject matter and the persons involved in the cause before the question of *venue can be properly reached. Bookout v. Beck*, 354 F.2d 823, 825 (9th Cir. 1965). ***[Emphasis added]***

In the adjudged decision of *Brown v. Pyle*, 310 F.2d 95, 96 (5th Cir. 1962) "Jurisdiction is the power to hear and determine a cause – the power to adjudicate. • • • ***Venue is the place where that power may be exercised***." ***[Emphasis added]***

In the adjudged decision of *Farmers Elevator Mutual Insurance Co. v. Austade & Sons, Inc.*, 343 F.2d 7, 11 (8th Cir. 1965), to wit:

> However, ***jurisdiction of the subject matter-the power and authority of the Court to act,*** 14 Am.Jur. Courts, § 160; 21 C.J.S. Courts § 15, is not equivalent in meaning to ***Venue, the place where the power to adjudicate is to be exercised, the place where the suit may be or should be heard. [Emphasis added]***

In the adjudged decision of *Olberding et al v. Illinois Cent. R. Co. Inc.*, 346 U.S. 338 (1953), wit:

> ***But unless the defendant has also consented to be used in that district, he has a right to invoke the protection which Congress has afforded him. The requirement of venue is specific and unambiguous***; it is not one of those vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction. ***[Emphasis added]***

Parties

a. **Karen Louise Vernon** is a native of the several States (government style manual 5.22)), American citizen, citizen of the United States of America, white citizen and Natural Born Native of the foreign state of Oregon, domiciled in one of the several States being Alaska therefore a citizen of Alaska.

(1) Karen Louise Vernon is not an employee of the Federal Government or any State government.

(2) Karen Louise Vernon is not a taxpayer.

(3) Karen Louise Vernon is not a "citizen of the United States" as defined in the Civil Rights Act of 1866 at 14 Stat. 27 wanting the same rights as "enjoyed by white citizens" and as codified today in 42 U.S.C. §§§ 1981, 1982 and 1988 (Revised Statutes of 1878 Title XXIV).

(3) Karen Louise Vernon is not associated with the "United States" defined in 28 U.S.C. 3002(15)(A)(B)(C) and denies same.

(4) Karen Louise Vernon is domiciled in one of the several States and in the "United States" as held by *Hooven & Allison v. Evatt*, 324 U.S. 652, 651 (1945) "[M]ay be the collective name of the states which are united by and under the Constitution."

(5) Karen Louise Vernon is not a federal citizen.

b. **Lonnie Gene Vernon** is a native of the several States (government style manual 5.22)), American citizen, citizen of the United States of America, white citizen and Natural Born Native of the foreign state of Oregon, domiciled in one of the several States being Alaska therefore a citizen of Alaska.

(1) Lonnie Gene Vernon is not an employee of the Federal Government or any State government.

(2) Lonnie Gene Vernon is not a taxpayer.

(3) Lonnie Gene Vernon is not a "citizen of the United States" as defined in the Civil Rights Act of 1866 at 14 Stat. 27 wanting the same rights as "enjoyed by white citizens" and as codified today in 42 U.S.C. §§§ 1981, 1982 and 1988 (Revised Statutes of 1878 Title XXIV).

(3) Lonnie Gene Vernon is not associated with the "United States" defined in 28 U.S.C. 3002(15)(A)(B)(C) and denies same.

(4) Lonnie Gene Vernon is domiciled in one of the several States and in the "United States" as held by *Hooven & Allison v. Evatt*, 324 U.S. 652, 651 (1945) "[M]ay be the collective name of the states which are united by and under the Constitution."

(5) Lonnie Gene Vernon is not a federal citizen.

c. **Janice L. Stowell** ("Stowell") is a citizen of the United States and resident of Alaska.

(1) Janice L. Stowell is an employee of the Government of the United States as evidenced by her Form 61.

(2) Janice L. Stowell is not an "inferior Officer of the United States" arising under Article II Section 2 Clause 2 of the Federal Constitution.

(3) Janice L. Stowell is an "employee" under the CODE of 5 U.S.C. § 2105 for the employees of the Government of the United States.

(4) Janice L. Stowell has an official duty as a Revenue Officer of the Internal Revenue Service with Employee ID# 91-06234

(5) Janice L. Stowell is a taxpayer.

(6) Janice L. Stowell is a "citizen of the United States" as defined in the Civil Rights Act of 1866 *Statute* at 14 Stat. 27 wanting the same rights "enjoyed by white citizens" and as codified today in 42 U.S.C. §§§ 1981, 1982 and 1988 (Revised Statutes of 1878 Title XXIV).

(7) Janice L. Stowell is associated with the "United States" defined in CODE at 28 U.S.C. § 3002(15)(A)(B)(C).

(8) Janice L. Stowell is associated with the "United States" defined in CODE at 28 U.S.C. 516.

(9) Janice L. Stowell is NOT domiciled in one of the several States and in the "United States" as held by *Hooven & Allison v. Evatt*, 324 U.S. 652, 651 (1945) "[M]ay be the collective name of the states which are united by and under the Constitution."

(10) Janice L. Stowell is a federal citizen.

(11) Janice L. Stowell is not a citizen of one of the several States.

(12) Janice L. Stowell is not a citizen of Alaska.

(13) Janice L. Stowell is not a member of the Bar in the State of Alaska.

d. **"United States"**, which arises under the Federal Constitution as held in *Hooven & Allison v. Evatt*, 324 U.S. 652, 651 (1945) "[M]ay be the collective name of the states which are united by and under the Constitution." precluding all of the statutory Definitions of "United States" including but not limited to as found in the CODE of 28 U.S.C. § 3002 (15)(A)(B)(C) and the CODE of 28 U.S.C. § 516 which precludes the "United States" of the several States.

(1) This "United States" will be noticed that in this Mandamus and any trespass by "UNITED STATES OF AMERICA", or other entity, is prohibited and precluded in this Mandamus.

e. **"UNITED STATES OF AMERICA"** ("USA") is an unknown entity and does not arise under the Federal Constitution composed of the several States of the Union established by We the People.

Judicial Notice

In the adjudged decision of *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002) citing *Sprewell v. Golden State Warriors,* 266 F.3d 979, 988 (9th Cir. 2001) "Nor must we "***accept as true allegations that contradict matters properly subject to judicial notice*** or by exhibit."" ***[Emphasis added]*** See also *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900, 901 (9th Cir. 2007); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008); *Gilead Sciences Securities Litigation v. Gilead Sciences, Inc.*, 536 F.3d 1049, 1055 (9th Cir. 2008); *Walter v. Drayson*, 496 F.Supp.2d 1162, 1165 (Dist. Ct. Hawaii 2007).

In *Mullis v. U.S. Bankruptcy Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987) "However, facts subject to judicial notice may be considered on a motion to dismiss."

In *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) "On a motion to dismiss, however, a court may take judicial notice of acts outside the pleadings."

This court shall take judicial Notice of the cases, Congressional Records of Congress and other public records including Statutes, United States Code (U.S.C.) and Code of Federal Regulations ("CFR") published including but not limited to, in the Federal Register and as mandated in 44 U.S.C. § 1507 "The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number."

And further this court shall take judicial Notice under the Federal Evidence Rule of 201 does invoke the Federal Rules of Evidence of Rule 201(d)(f)(g) for mandatory judicial Notice including but not limited to Rule 201 "**(d) When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.";

and, 201(f) "**(f) Time of taking notice.** Judicial notice may be taken at any stage of the proceeding." ;

and, 201(g) **"Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed." for all of the Federal Register publications cited herein.

Summary of the Argument

1. Congress has mandated in Section 4(a) of 1946 APA @ 60 Stat. 237-244 of Notice and Comment being prong one mandate and prong two being Section 4(c) of 1946 APA @ 60 Stat. 237-244 for the 30 day effective date. This is today published in the current codified Administrative Procedure Act ("APA") in 5 U.S.C. § 552(a)(1) and in 5 U.S.C. § 553 and specifically in 553(b)(c)(d) that the IRS shall publish in the Federal Register all "substantive rules" (§ 552(a)(1)(D)) also evidenced by Federal Register November 19, 2002 at 67 FR 69673-69688 for 26 CFR § 601.702 @ *ibid. 67 FR 69675* affirming the IRS is mandated to comply with 5 U.S.C. § 552(a)(1) and also affirming as published in the Federal Register of "and various ***substantive regulations*** under the Internal Revenue Code of 1986, such as the regulations in ***part 1*** of this chapter ***(Income Tax Regulations).***" And further *ibid. @ 67 FR 69675* "(ii) ***Effect of failure to publish*** . . . any matter referred to in paragraph (a)(1) [5 U.S.C. § 552(a)(1)] of this section w***hich is***

required to be published in the Federal Register, such person is not required in any manner to resort to, or ***be adversely affected by***, such matter ***if it is not so published*** . . ."

2. There are no Part 1 substantive Assessment regulations mandated to be published by 26 U.S.C. § 6201, 6202 and 6203 in the Federal Register in existence. Therefore as a matter of law, the Certificates of Assessments using a 4340 form or any Assessments mandated to exist for a Federal Tax Lien to exist are precluded. The IRS has recast this as a "Notice of Federal Tax Lien" is precluded from all statutory Authority of Congress to exist as there are no Part 1 Assessments regulations in existence. Therefore if there is no Part 1 substantive regulations Assessment under 5 U.S.C. § 552(a)(1) and 5 U.S.C. § 553(b)(c)(d) flows *a fortiori* there can be no Notice of Federal Tax Lien.

3. The Vernons are being denied Due Process of Law if the particular Notice mandated and secured in the Bill of Rights and the Federal Constitution is not disclosed to the Vernons and to date, that has not been done as mandated by 5 U.S.C. § 552(a)(1) and 5 U.S.C. § 553(b)(c)(d).

4. Johnson's purported "Statement of the Case" is not only libelous but fraud upon the courts as the adjudged decisions of the courts including the Supreme Court of the United States, the Administrative Procedure Act ("APA") of Congress of 1946 as codified today in 5 U.S.C. chapters 5-9 and all of the publications in the Federal Register are Opposition pg 2 "After 53 pages of baseless and frivolous arguments (along with 40 equally irrelevant exhibits), the Vernons finally list 29 separate causes of actions. As set out below, each claim lacks any merit, as such the counter claim should be dismissed in

its entirety, with prejudice." This is non-responsive to the Counter-Claim as the issues are to be addressed, admitted or denied or they are given validity.

5. A counterclaim under Rule 12(b) is a proper response.

Johnson's "Law and Argument" Section

Johnson recasts Vernons part 1 "***substantive regulations***" that have the force and effect of law in compliance with 5 U.S.C. § 552(a)(1) and 5 U.S.C. § 553(b)(c)(d) to "[a]ll of the regulations "***implementing***" federal tax assessment and lien procedures in Part 301 of Title 26 of the Code of Federal Regulations were, in fact, promulgated in accordance with the APA." Johnson does not state that the part 301 regulations have the "force and effect of law" or are "substantive rules", which they aren't as held in *Chrysler v. Brown*, 441 U.S. 281, 283 (1979) "***Section 301 is a*** "**housekeeping statute,**" authorizing rules of agency organization, procedure, or practice as opposed to "**substantive rules.**" *Ibid. Chrysler* is included in Vernon's counterclaim dismissed by Johnson as frivolous and without merit.

And further Johnson continues the ruse and illusion that Part 301 regulations are were adopted in full compliance with the ***notice and comment requirements of the APA*** with FN4 "Any subsequent changes to these section were technical and ministerial, and did not require notice of proposed rule-making. 5 U.S.C. § 553(b)(B)." See *infra.*, **Substantive Rules/regulations, "For Cause" Exceptions of 5 U.S.C. § 553(b)(B) and "§ 553(d)(3) and Assessment Regulations and Authority."** Johnson's statement that the "Part 301 regulations were adopted in ***full compliance with the notice and comment requirements of the APA***" rises to Fraud on the Court as the mandates of 5 U.S.C. § 553(b)(c)(d) and the exceptions are only for emergency situations to be followed with

mandates of 5 U.S.C. § 553(b)(c)(d), *infra.* **"For Cause" Exceptions of 5 U.S.C. § 553(b)(B) and "§ 553(d)(3).**

Johnson continues with more mendacious statements in the Opposition pg 4 "Moreover, the Vernons' APA challenge to the ***implementing regulations*** is ***wholly irrelevant*** to the issues for decision in this Case: whether the Court has authority to reduce ***assessments*** to judgment . . ." Johnson states the mandates on Assessments of 26 U.S.C. §§§ 6201, 6202 and 6203 and mandated regulations under Part 1 substantive regulations that have the force and effect of law under 5 U.S.C. § 552(a)(1), 5 U.S.C. § 553(b)(c)(d) and as published in the Federal Register November 19, 2002 at 67 FR 69673-69688 for 26 CFR § 601.702 @ *ibid. 67 FR 69675* affirming the IRS is mandated to comply with 5 U.S.C. § 552(a)(1) and also affirming as published in the Federal Register of "and various ***substantive regulations*** under the Internal Revenue Code of 1986, such as the regulations in ***part 1*** of this chapter ***(Income Tax Regulations)***" is ***"wholly irrelevant."***

There is no doubt that Johnson will rely upon bypassing the nonexistent part 1 substantive regulations by proffering "Certificates of Assessments" are fraudulent documents as there are no Part 1 "substantive regulations" in existence mandated by 26 U.S.C. § 6203 published in the Federal Register to support these purported "Certificates of Assessments" printed from some unknown identified computer and unidentified party inputting this information. Johnson will with the assistance of the USDC attempt to preclude the Vernons from confronting in open court by cross-examination under Oath to discern the veracity and authority of these "Certificates of Assessments" and the mandated APA procedural evidence.

Form 4340 "Certificates of Assessments" in *Hughes v. United States*, 953 F.2d 531, 540 (9th Cir. 1992) "probative evidence in and of themselves and, in the absence of contrary evidence, are sufficient to establish that . . . assessments were properly made" is fatally flawed and in reality pure fraud by the IRS and DoJ attorneys.

Johnson has planned the tried and true denial of the Vernons right to cross-examine the party that only "certified" that a "Certification of Official Record" was a "true and complete" printed from an unknown computer with only the only perceived authority being a "Delegation Order CI-18" and this statement was not under the "penalties of perjury" precluding any veracity of the contents of the "Certificates of Assessment" and validating the veracity of any authority to generate these "Certificates of Assessment" by statutes of Congress and part 1 substantive regulations published in the Federal Register having the force and effect of law.

Johnson continues with "assessments . . . derive, first and foremost, from statute, not from agency regulation." Johnson cites *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) for "private right of action" has no application and is off point.

Johnson continues with "Typical of tax protester gibberish" and misstates the Vernons status as "citizens of a sovereign state." The Vernons did not make that statement. The issue of "citizens of the United States" is clearly defined by Congress in 42 U.S.C. §§§ 1981, 1982 and 1988, wherein the Vernons are "white citizens" already and do not subscribe to have a statutory status clothing them.

Due Process of Law

"Due process of law" includes certain immutable principles of justice, which also include ***procedures*** is a restraint upon all three branches of our tripartite constitutional

Republic was clearly pronounced in the adjudged decision of *Holden v. Hardy,* 169 U.S. 366, 390, 391 (1898), to wit:

> This court has never attempted to define with precision the words ***'due process of law,'*** nor is it necessary to do so in this case. ***It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard, *390 as that no man shall be condemned in his person or property without due notice, and an opportunity of being heard in his defense***. What shall constitute due process of law was perhaps as well stated by Mr. Justice Curtis in Murray's Lessees v. Land Co., 18 How. 272, 276, as anywhere. He said: 'The constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. ***It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law' by its mere will***
>
> * * *
>
> ***Recognizing the difficulty in defining with exactness the phrase 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property, or right to property, shall be taken for the benefit of another, or for the benefit of the state, without compensation, and that *391 no one shall be condemned in his person or property without an opportunity of being heard in his own defense.*** *[Emphasis added]*

The immutable principles of "due process of law" of both substantive law and ***procedures*** have been upheld in the Supreme Court of the United States in many cases including *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847, 848 (1992), to wit:

> [T]he Clause [Fourteen Amendment] has been understood to contain a substantive component as well, one ***"barring certain government actions regardless of the fairness of the procedures used to implement them."*** *Daniels v. Williams,* 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986). As Justice Brandeis (joined by Justice Holmes) observed, ***"[d]espite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure.***
>
> * * *
>
> Justice Harlan "***Due process*** has not been reduced to any formula; its content ***cannot be determined by reference to any code.*** . . . it certainly ***has not been one where judges have felt free to roam where unguided speculation might take them***. . . . A decision of this Court which radically departs from it could not long survive, ***while a decision which builds on what has survived is likely to be sound. . . .***" *[Emphasis added]*

Substantive Law

In the adjudged decision of *Allen v. Fisher*, 574 P.2d 1314 (Ariz. App. 1978), to wit:

> While there is no precise definition of either term, it is generally agreed that a ***substantive law creates, defines and regulates rights*** while a procedural one prescribes the method of enforcing such rights or obtaining redress. *Romano v. B. B. Greenberg Co.*, 108 R.I. 132, 273 A.2d 315 (1971); *Ware v. City of Anchorage*, 439 P.2d 793 (**Alaska** 1968).

In the adjudged decision of *Wooley v. Amcare Health Plans of Louisianna*, 944 So.2d 668,672 (1st Cir. 2006) "***Substantive laws establish*** or ***change substantive rules***, rights and duties; procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of the laws."

In the adjudged decision of *State Engineer, State of Nevada v. South Fork of the Te-Moak Tribe of Western Shoshone Indians of Nevada*, 339 F. 3d 804, 811 (9th Cir. 2003) "[W]e [the 9th Cir.] will not apply a ***statute*** retroactively unless it "takes[s] away no substantive right" and does not "alter liability under the applicable ***substantive law***." (cites omitted)

Production Tool Corp. v. Employment and Training Admin., Dept. of Labor, 688 F.2d 1161, 1165 (7th Cir. 1982) citing *Chrysler v. Brown*, 441 U.S. 281 (1979) "***Legislative rules*** [substantive rules] are said to have the "***force and effect of law***"-i.e., they are as binding on the courts as ***any statute enacted by Congress***. *Chrysler*, 441 U.S. at 295, 99 S.Ct. at 1714."

"Substantive law", i.e. statutes is of the same status as "substantive rules", i.e. statutes when promulgated in compliance with the Administrative Procedures Act

("APA") mandated by Congress in compliance with 5 U.S.C. § 553(b)(c)(d). See substantive regulations, *infra.*

Substantive Rules/Regulations

There is a mandate of Congress in 5 U.S.C. § 552(a)(1) that all agencies, which includes the Internal Revenue Service ("IRS") 5 U.S.C. § 552(a)(1) "Each agency shall separately state and currently public in the Federal Register for guidance of the public." Continuing in 5 U.S.C. § 552(a)(1)(D) "***substantive rules of general applicability*** adopted as authorized by law, and statement of general policy or interpretations of general applicability formulated and adopted by the agency;"

This is affirmed as published in the Federal Register November 19, 2002 at 67 FR 69673-69688 for 26 CFR § 601.702 @ *ibid. 67 FR 69675* affirming the IRS is mandated to comply with 5 U.S.C. § 552(a)(1) and also affirming as published in the Federal Register of "and various ***substantive regulations*** under the Internal Revenue Code of 1986, such as the regulations in ***part 1*** of this chapter ***(Income Tax Regulations)***" as published in the Federal Register November 19, 2002 at 67 FR 69673-69688, which this court is to take judicial Notice of under 44 U.S.C. § 1507 and Evidence Rule 201. And further *ibid. @ 67 FR 69675* "(ii) ***Effect of failure to publish*** . . . any matter referred to in paragraph (a)(1) [5 U.S.C. § 552(a)(1)] of this section w***hich is required to be published in the Federal Register***, such person is not required in any manner to resort to, or ***be adversely affected by***, such matter ***if it is not so published*** . . ."

The only means to determine if a rule/regulation is a "substantive rule" in compliance with the Administrative Procedure Act ("APA") is found in 5 U.S.C. § 553 and specifically in 553(b)(c)(d).

The 9th Circuit is extremely knowledgeable on the mandates of the APA to determine if a regulation is a substantive regulations having the force and effect of law as evidenced by this case being *Paulsen v. Daniels*, 413 F.3d 999, 1004-1005 (9th Cir. 2005) citing the holding in *Chrysler v. Brown*, 441 U.S. 281 (1979), to wit:

> The APA requires agencies to follow certain procedures when it decides to issue a rule, including: (1) publishing notice of the proposed rule-making in the *Federal Register*, ***5 U.S.C. § 553(b)***; (2) ***providing a period for interested persons to comment on the proposed rule, which comments will be considered by the agency prior to adopting the rule***, *id.* at § ***553(c)***; and (3) ***publishing the adopted rule not less than thirty days before its effective date, with certain exceptions that are not applicable here,*** *id.* at ***§ 553(d)***.
> [2] "In enacting the APA, Congress made a judgment that notions of fairness and informed administrative decisionmaking ***require that agency decisions be made only after affording interested persons notice and an opportunity to comment***." *Chrysler Corp. v. Brown,* 441 U.S. 281, 316, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979); *see also Riverbend Farms, Inc. v. Madigan,* 958 F.2d 1479, 1485 (9th Cir.1992) ("[T]he notice and comment requirements ... are designed to ensure public participation in rulemaking.").

Interpretative regulations can not be violated or enforced as held in *Drake v. Honeywell, Inc.*, 797 F.2d 603, 607 (8th Cir. 1986) totally understood by the Vernons, to wit:

> As a consequence of this distinction, while an administrative agency delegated legislative power may sue to enforce its legislative rule, just as it may sue to enforce a statute, ***it cannot ground legal action in a violation of its interpretive rule.***
>
> * * *
>
> ***Being in nature hortatory, rather than mandatory, interpretive rules never can be violated.*** ***[Emphasis added]***

A later case of the 9th Circuit is in total accord with *ibid. Drake* is *United States v. American Production Industries, Inc.*, 58 F.3d 404, (9th Cir. 1995), to wit:

> ***Only regulations having the "force and effect of law" can create a private right of action.*** *Chrysler Corp. v. Brown,* 441 U.S. 281, 295-303, 99 S.Ct. 1705, 1714-18, 60 L.Ed.2d 208 (1979). In contrast, "rules of

> agency organization, procedure, or practice"-sometimes called ***"interpretive rules"-do not create enforceable rights. 5 U.S.C. §§ 553(b), 553(d);*** *Chrysler,* 441 U.S. at 315, 99 S.Ct. at 1724; *see also Guadamuz v. Bowen,* 859 F.2d 762, 771 (9th Cir.1988) ("***[I]nterpretive rules express*** an agency's ... ***internal house-keeping measures*** organizing Agency activities."). ***[Emphasis added]***

Batterton v. Francis, 432 U.S. 416, 425 (1977) "By way of contrast, a court is not required to give effect to an ***interpretative regulation***."

"Force and effect of law" have the same effect as any statute enacted by Congress when in compliance with the APA, i.e. 5 U.S.C. § 553(b)(c)(d) as a "substantive rule" is pronounced in *Production Tool Corp. v. Employment and Training Admin., Dept. of Labor*, 688 F.2d 1161, 1165, 1166 (7th Cir. 1982) citing *Chrysler v. Brown*, 441 U.S. 281 (1979), to wit:

> *@ 1165* - The distinction between ***legislative*** and ***interpretive rules*** is generally drawn to determine one of two questions: 1) ***whether the APA's procedural requirements for rule making apply***, see, e.g., *Lewis-Mota v. Secretary of Labor,* 469 F.2d 478 (2d Cir. 1972), or 2) whether the rule has the ***"force and effect of law,"*** see, e.g., *Chrysler Corp. v. Brown*, 441 U.S. 281, 99 S.Ct. 1704, 60 L.Ed.2d 208 (1979). ***Legislative rules are said to have the "force and effect of law"-i.e., they are as binding on the courts as any statute enacted by Congress***. *Chrysler*, 441 U.S. at 295, 99 S.Ct. at 1714. "A reviewing court is not free to set aside those regulations simply because it would have interpreted the statute in a different manner." *Batterton v. Francis*, 432 U.S. 416, 425, 97 S.Ct. 2399, 2405, 53 L.Ed.2d 448 (1977). Legislative rules are valid so long as they are reasonably related to the purposes of the enabling legislation, *Mourning v. Family Publications Service, Inc., 411* U.S. 356, 369, 93 S.Ct. 1652, 1660, 36 L.Ed.2d 318 (1973), promulgated in compliance with statutory procedures, *Chrysler*, 441 U.S. at 303, 99 S.Ct. at 1718, and not arbitrary or capricious, *Batterton*, 432 U.S. at 426, 97 S.Ct. at 2406.
>
> * * *
>
> *@ 1166* - Professor Davis has articulated the test for categorizing a rule as legislative or interpretive as follows:
> **(R)ules are legislative when the agency is exercising delegated power to make law through rules, and rules are interpretative when the agency is not exercising such delegated power in issuing them.** *[Emphasis added]*

"For Cause" Exceptions of 5 U.S.C. § 553(b)(B) and § 553(d)(3)

As held and pronounced in courts any exception to the § 553 notice and comment period and 30 day effective date must be narrowly construed and only reluctantly countenanced for some rare emergency and not used as an escape clause wherein temporary rules can be promulgated with the mandates of § 553 rule making following as mandated by Congress.

The exception for the Notice and Comment period is stated in 5 U.S.C. § 553(b)(B) and as pronounced in *State of New Jersey v. U.S. EPA*, 626 F.2d 1038, 1041 (C.A.D.C. 1980), to wit:

> And although section 553 of the Administrative Procedure Act (APA) requires that, when an agency proposes to issue a rule, it must first publish a general notice in the Federal Register, ***5 U.S.C. § 553(b),*** and "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments," ***5 U.S.C. § 553(c)***"
>
> * * *
>
> [T]he ***exception*** to the usual requirement of notice and comment rule-making which section ***553(b)(B)*** creates for those occasions "when the agency for ***good cause*** finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are ***impracticable, unnecessary, or contrary to the public interest.***" 5 U.S.C. s 553(b)(B).

Ibid. State of New Jersey @ 1042 "(T)he mere existence of deadlines for agency action, whether set by statute or court order, does not in itself constitute good cause for a § 553(b)(B) exception." *Ibid @ 1045* "[T]he courts have held that various exceptions to the notice-and-comment provisions of section 553 ***will be narrowly construed and only reluctantly countenanced***" citing S.Doc No. 248, 79th Cong., 2nd Sess. 19, 199, 258 (1946); *American Bus Ass'n v. U.S.*, 627 F.2d 525, 529 (C.A.D.C. 1980); *Humana of S. Carolina v. Califano*, 590 F.2d 1070, 1082 (C.A.D.C. 1978). See also *Zhang v. Slattery*,

55 F.3d 732, 744 (2nd Cir. 1995) "[E]xceptions to § 553 should be "narrowly construed and only reluctantly countenanced.""

In *American Federation of Gov. Employees v. Block*, 655 F.2d 1153, 1156 (C.A.D.C. 1981), to wit:

> "An agency may avoid the 553(b) requirement if it "for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary , or contrary to the public interest" 5 U.S.C. § 553(b)(B) (1976). An agency may also avoid its 553(d) notice obligation "for good cause found and published with the rule." 5 U.S.C. § 553(d)(3)(1976).
>
> * * *
>
> [U]nderstand that the exceptions to provisions of section 553 "***will be narrowly construed and only reluctantly countenanced***" . . . As the legislative history of the APA makes clear, moreover, the exceptions at issue here ***are not "escape clauses***" that my be ***arbitrarily utilized at the agency's whim***. S.Rep.No. 752, 79 Cong., 1st Sess. (1945) reprinted in the Administrative Procedure Act, Legislative History 79th Cong. 1944-46 at 200, 201. Rather, use of these ***exceptions by administrative agencies should be limited to emergency situations***, *id.* At 200; furthermore, the grounds justifying the agency's use of the exception should be incorporated within the published rule.
>
> *Ibid at 1157* Common sense suggests that any administrative action taken in a ***rare "emergency" situation*** such as the one at hand, [FN6] while perhaps necessarily "immediately effective," need only be temporary, ***pending public notice-and-comment procedures***. *Valiant Steel and Equipment, Inc. v. Goldschmidt*, 449 F.Supp. 410 at 412-413(D.D.C. 1980.)
>
> *Ibid @ 1158* Therefore, ***once an emergency situation has been eased by the promulgation of interim rules***, it is ***crucial*** that the comprehensive permanent regulations which follow ***emerge as a result of the congressionally–mandated policy of affording public participation that is embodies in sections 553***. *[Emphasis added]*

In *Alcaraz v. Block*, 746 F.2d 593, 603 (9th Cir. 1984) "Thus, "[c]ourts are not free to add substantive or procedural hurdles for agencies to overcome if Congress has not established such requirements. *South Carolina ex rel. Tindal v. Black,* 717 F.2d 874, 885

(4th Cir. 1983); *see also Baltimore Gas and Electric Co. v. NRDC*, 462 U.S. 87 (1983)." *Ibid. Alcaraz @ 612* "The exceptions to section 553 will be "***narrowly construed and only reluctantly countenanced.***"" cites omitted "This is consistent, of course, with Congress's clear intent to preserve the statutory purpose of ***informal rulemaking by making sure those exceptions did not become "escape clauses***," . . . ***which an agency could utilize at its whim***." *Ibid. @ 613* "***Substantive rules are those which effect a change in existing law or policy***" *Powderly v. Schweiker,* 704 F.2d 1092, 1098 (9th Cir. 1983) . . . On the other hand "***[i]nterpretative rules are those which merely clarify or explain existing law or regulations***" *Powderly, 704 F.2d at 1098.* These rules are essentially hortatory and instructions in that they go more "to what the administrative officer ***thinks the statute or regulations means***." Cites omitted.

In *National Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 384, 385 (2nd Cir. 1978) Congress clearly intended that exceptions of 5 U.S.C. § 553(b)(B) be very narrow ones "The legislative history of the Administrative Procedure Act demonstrates that Congress intended the exceptions in s 553(b)(B) to be narrow ones. The Senate Report, No. 752, 79th Cong. 1st Sess. (1945), reprinted in the Legislative History of the Act at 200, stated:

> *385 The exemption of situations of emergency or necessity is not an ***"escape clause"*** in the sense that any agency has discretion to disregard its terms or the facts. A true and supported or supportable ***finding of necessity or emergency must be made and published.*** ***"Impracticable"*** means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings. "***Unnecessary***" means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved. "***Public interest***" supplements the terms "impracticable" or "unnecessary"; it requires that public rule-making procedures shall not prevent an agency from operating and that, on the other hand, lack of public interest in rule making warrants an agency to dispense with public procedure.[FN14]

FN14. The House Report, H.R.Rep. No. 1980, 79th Cong., 2d Sess. (1946), Legislative History at 258, uses identical language."

In *Methodist Hospital of Sacramento, et al. v. Shalala*, 38 F.3d 1225, 1226 (C.A.D.C. 1994) "As a general matter, "strict congressional imposed deadlines, without more, by no means warrant invocation of the good cause exception." *Petry v. Block*, 737 F.2d 1193, 1203 (D.C.Cir. 1984)""

Assessment Regulations and Authority

As pronounced in *Bagley v. Lumpkin*, 719 F.2d 1462, 1464 (9th Cir. 1983) "In fact, effective ***cross-examination*** is so important in our legal system that Professor Wigmore described it as " ***beyond any doubt the greatest legal engine ever invented for the discovery of truth***." 5 J. Wigmore, Evidence in Trials at Common Law § 1367, at 32 (Chadbourn rev. ed. 1974)." See also *Willams v. Borg*, 139 F.3d 737, 741 (9th Cir. 1998); *N.L.R.B. v. First Termite Control Co. Inc.*, 747 F.2d 424, 427 FN3 (9th Cir. 1981).

The filing of an Income Tax return is a byproduct of a regulatory requirement as pronounced in *Hubbell v. United States*, 530 U.S. 27, 35 (2000) "Similarly, the fact that incriminating evidence may be the ***byproduct of obedience to a regulatory requirement***, ***such as filing an income tax return***, (FN14)" with FN14 being "*United States v. Sullivan*, 274 U.S. 259, (1927)."

The IRS is mandated to be held to the APA procedures as firmly established and pronounced in *Vitarelli v. Seaton*, 359 U.S. 535, 546, 547 (1959) "An executive agency ***must be rigorously held to the standards by which it professes its action to be judged*** [cites omitted] . . . . This judicially evolved rule of administrative law is now ***firmly established*** and, if I may add, rightly so. ***He that takes the procedural sword shall perish with that sword.***" See also *Sameena, Inc. v. United States Air Force*, 147 F.3d 1148,

1153, 1155 (9th Cir. 1998) @ *1153* "The Supreme Court has long recognized a federal agency is obliged to abide by the regulations it promulgates" citing *ibid. Vitarelli. Ibid. Sameena @ 1153* "An agency's failure to follow its own regulations "tends to cause unjust discrimination and deny adequate notice" and consequently may result in an violation of an individual's constitutional right to due process." *Ibid. @ 1156* "He that takes the procedural sword shall perish with that sword."

Under 26 U.S.C. § 6203 – Method of Assessment – "The ***assessment shall be*** made by recording the liability of the taxpayer in the *office of the Secretary* ***in accordance with rules or regulations prescribed by the Secretary***." Note, there must be regulations promulgated and the regulations are required to be Part 1 substantive regulations for Individual Income Regulations, *supra.* published in the Federal Register November 19, 2002 at 67 FR 69673-69688 for 26 CFR § 601.702 @ *ibid. 67 FR 69675*..

In the adjudged case of *United States v. Mersky*, 361 U.S. 431, 437, 438 (1960) clearly pronounces the mandatory relationship between statutes and regulations, to wit:

> An administrative regulation, of course, is not a 'statute.' While in practical effect regulations may be called 'little laws,' [FN7] they are at most but off-spring of statutes. Congress alone may pass a statute, and the Criminal Appeals Act calls for direct appeals if the District Court's dismissal is based upon the invalidity or construction of a statute. See *United States v. Jones*, 1953, 345 U.S. 377, 73 S.Ct. 759, 97 L.Ed. 1086. This Court has always construed the Criminal Appeals Act narrowly, limiting it strictly 'to the instances specified.' *United States v. Borden Co.*, 1939, 308 U.S. 188, 192, 60 S.Ct. 182, 185, 84 L.Ed. 181. See also *United States v. Swift & Co.*, 1943, 318 U.S. 442, 63 S.Ct. 684, 87 L.Ed. 889. ***Here the statute is not complete by itself, since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command.*** But it is the statute which creates the offense of the willful removal of the labels of origin and provides the punishment for violations. The regulations, on the other hand, prescribe the identifying language of the label itself, and assign the resulting tags to

> their respective geographical areas. ***Once promulgated,*438 these regulations, called for by the statute itself, have the force of law***, and violations thereof incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. ***The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other.***

Batterton v. Francis, 432 U.S. 416, 425 (1977) "Legislative, or substantive, regulations are "***issued by an agency pursuant to statutory authority*** and . . . ***implement the statute***, as, for example, the proxy rules issued by the Securities and Exchange Commission . . .. ***Such rules have the force and effect of law***."

As published in on November 22, 1967 in the Federal Register at 32 FR 15990-16035 specifically at 32 FR 15991-92 of 26 CFR § 601.102 – Classification of taxes collected by the Internal Revenue Service – "(a) Principal divisions. Internal revenue taxes fall generally into the following principal divisions: (1) ***Taxes collected by assessment.*** (2) Taxes collected by means of revenue stamps." AUTHORITY: ***5 U.S.C. 301*** and 552." Subpart I also issued under 39 U.S.C. 3220 [Note by Person filing: 3220 not relevant – Use of official mail in the location and recovery of missing children.]

The ***only assessment regulations*** were published November 3, 1967 in the Federal Register is at 32 FR 15241-15387 with the excerpt being 32 FR 32 FR 15241-42, 32 FR 15274 of 26 CFR 301-6201-1 (Assessment Authority) under the authority of 26 U.S.C. § 6201 and 26 CFR § 301.6203-1 (Method of Assessment) under the authority of 26 U.S.C. § 6203 which this court shall take judicial Notice under 44 U.S.C. § 1507 and Rule 201. These regulations ***do not comply with 5 U.S.C. § 553 (b)(c)(d)*** to be a substantive regulation having the force and effect of law.

The source prior of this republished Final Rule in 1967 of 26 CFR § 301.6201-1 and 26 CFR § 301.6203-1 was published December 28, 1961 at 26 FR 12553-12559 which had no Notice and Comment period failing prong one of 5 U.S.C. § 553(b)(c), i.e. 4(a) of 1946 APA @ 60 Stat. 237-244 of Notice and Comment and failing prong two being § 553(d), i.e. 4(c) of 1946 APA @ 60 Stat. 237-244 for the 30 day effective date. 26 FR 12553-12559 on 12559, to wit:

> Because this Treasury decision makes only technical changes, it is hereby found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under ***section 4 (a)*** of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of ***section 4(c)*** of that Act.

For 26 CFR § 301.6203-1 Final Rule was published on November 11th, 1959 at 24 FR 9193-9205 uses the exact verbiage of 26 FR 9205, *supra.*, and is not in compliance with the 1946 APA at 60 Stat. 237-244 Sections 4(a) and 4(c).

For 26 CFR § 301.6201-1 and 26 CFR § 301.6203-1 Final Rule was published on January 4, 1955 at 20 FR 28-51 @ 20 FR 51 is not in compliance with the 1946 APA at 60 Stat. 237-244 Section 4(c), to wit:

> Because the regulations prescribed by this Treasury decision are necessary for the enforcement of the applicable provisions of the Internal Revenue Code which are generally effective January 1, 1955, it is hereby found that it is ***impracticable and contrary to the public interest*** to issue these regulations subject to the effective date limitation of ***section 4(c)*** of the Administrative Procedure Act.

For 26 CFR § 301.6201-1 and 26 CFR § 301.6203-1 Proposed Rule was published on December 11th, 1954 at 19 FR 8457-8481 @ 19 FR 8457 is not in compliance with the 1946 APA at 60 Stat. 237-244 Section 4(a) and 4(c), to wit:

> Although 30 days are ordinarily provided for furnishing views, data, and arguments pertaining to proposed rule making, a period of 15 days is provided with respect to these proposed regulations in order to ***make***

> ***possible more expeditious promulgation*** of the regulations under these chapters with generally become effective on January 1, 1955.

"[I]n order to make possible more expeditious promulgation" is precluded as an exception to the mandates of the then 60 Stat. 237-244 Section 4(a)and 4(c) today codified at 5 U.S.C. § 553(b)(c)(d). There was no "emergency" or no temporary rules promulgated followed by permanent rules under the mandates of § 553(b)(c)(d) remembering that these are merely Part 301 interpretative precluded from being Part 1 substantive rules (Individual Income Regulations) that have the force and effect of law mandated by 5 U.S.C. § 552(a)(1) and as published in the Federal Register November 19, 2002 at 67 FR 69673-69688 for 26 CFR § 601.702 @ *ibid. 67 FR 69675* affirming the IRS is mandated to comply with 5 U.S.C. § 552(a)(1).

All Part 301 regulations (procedure and administration) are only for federal employees. This was published the Federal Register August 4th, 1994 as a Final Rule 59 FR 39910-39931 for the Department of Justice by then Attorney General of the United States Janet Reno at 59 FR 39915, the conclusive evidence of the holdings in *Chrysler v. Brown*, 441 U.S. 281, 307-316 (1979) *of* ***"301" type regulations known as "housekeeping statute"***, which ***do not have the force and effect of law*** *ibid.* ***under Chrysler holdings*** and will not have a comment period as mandated under the authority of 5 U.S.C. § 553 *ibid.* ***Chrysler's holdings*** **is** ***linked directly to 5 U.S.C. § 301, which is only for federal employees*** in **Attachment 3**, which this court shall take judicial Notice under 44 U.S.C. 1507 and Evidence Rule 201, to wit:

> Rules governing the conduct of Department attorneys, or any other officials of the Executive Branch, ***may be promulgated only pursuant to constitutional or statutory authority.*** Congress's delegation of authority need not be specific or explicit. *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 307-08 (1979). The Department believes that it possesses appropriate

> statutory authority to promulgate this regulation ***pursuant to two distinct sources***: ***5 U.S.C. 301 ("commonly referred to as the 'housekeeping statute,'" Chrysler Corp., 441 U.S. at 309 (citation omitted)),*** and title 28 of the United States Code, which in a variety of provisions authorizes the Attorney General and the Department to enforce federal law and to regulate the conduct of Department attorneys.
>
> Section 301 of title 5, United States Code, authorizes the Attorney General to "prescribe regulations for the government of [her] department," "the conduct of its employees," and "the distribution and performance of its business." 5 U.S.C 301. The Supreme Court has held that this provision authorizes the Attorney General to issue regulations with extra-departmental effect. *See, e.g., Georgia* v. *United States,* 411 U.S. 526, 536 (1973) (holding that section 301 provided the Attorney General with "ample legislative authority" to issue regulations that established procedural and substantive standards binding on state and local governments); *United States ex rel. Touhy. Ragen,* 340 U.S. 462 (1951) (federal government attorney could not be held in contempt for following an Attorney General regulation promulgated pursuant to a predecessor to section 301).

Notice of Federal Tax Lien – No Part 1 Substantive Regulations

The Notice of Federal Tax Lien ("NFTL") proffers three different code sections as the its authority being 26 U.S.C. §§§ 6321, 6322 & 6323."

There are no Part 1 regulations for 26 CFR §§§ 1.6321-x, 1.6322-x, or 1.6323-x. There are no other Part 1 regulations under the Authority of 26 U.S.C. §§§ 6321, 6322 or 6323. There are no regulations in Part 20 (20.6321-x, 20.6322-x or 20.6323-x) or Part 31 (31.6321-x, 31.6322-x or 31.6323-x), or other regulations in Part 20 or Part 31 under the Code Authority of 26 U.S.C. §§§ 6321, 6322 or 6323.

The only regulations published in the Federal Register as mandated are the following Part 301 regulations under the Code Authority of 5 U.S.C. § 301 for federal employees for the NFTL.

26 U.S.C. § 6321 – Lien for taxes

Under 26 U.S.C. § 6321 there is one Part 301 regulation being 26 CFR

§301.6321-1 –"Lien for taxes" republished in November 3, 1967 in the Federal Register at 32 FR 15241-15387 with specific Federal Register publication excerpt at 32 FR 15241, 15243, 15247 and 15284-85. The Authority of 7805 is at 32 FR 15247.

26 CFR 301.6321-1 was amended August 12, 1971 as published in the Federal Register at 36 FR 15040-41 under the Authority of 7805 at 36 FR 15041. This FR publication did not comply with 5 U.S.C. § 553 at 32 FR 15042 " . . . it is found that it is unnecessary to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code . . ."

26 CFR 301.6321 – 1 was amended on December 28 1978 as published in the Federal Register at 43 FR 59356-59376 under the Authority of 7805 at 43 FR 59357 with the specific Federal Register Publication excerpt at 43 FR 59356-57, 60-64. The 7805 Authority is at 43 FR 59357. There is no compliance statement or preclusion of being compliant with 5 U.S.C. § 553(b)(c)(d) or the Administrative Procedures Act.

Conclusion

Therefore the Vernons have been Denied Due Process of Law as Johnson has refused to disclose that there are no Part 1 substantive regulations having the force and effect of law in compliance with the mandates of 5 U.S.C. § 552(a)(1) and 5 U.S.C. § 553(b)(c)(d) for the Code sections for Assessment and Notice of Federal Tax Liens.

And further, Johnson refused to even mention "substantive regulations" but instead recast and inserted "implementing regulations" also omitting "force and effect of law" in compliance with 5 U.S.C. § 553(b)(c)(d). They are not the same.

And further, the Vernons definitely will pay all Income Tax under the Laws of the United States if so published in the Federal Register as part 1 substantive regulation

having the force and effect of law in compliance with 5 U.S.C. § 552(a)(1) and 5 U.S.C. § 553(b)(c)(d) so that the Vernons can have Notice creating an obligation and duty, which to date is missing.

And further, this instant Case should be dismissed with prejudice as it not meet the factual and law issues to be sustained.

My Hand,

My Hand,

Certificate of Service

I certify that a true and correct copy of this Document were mailed First Class USPS to the following parties, to wit:

Steven P. Johnson
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044-0683
202-354-1857 Phone
202-307-0054 Fax

Date November 23, 2009

Signature