

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA

Petitioner,

v.

DONALD MCDOWELL

Respondent

Cause No. 4:07MC00.583 JCH

**MOTION TO VACATE SHOW CAUSE ORDER
And DISMISS THE PETITION**

COMES NOW the Respondent, Donald McDowell, by special appearance in challenge of jurisdiction; to show the court four distinct grounds of lack of authority, as follows:

I. Improper Petitioner

- 1.) The petition names the “UNITED STATES OF AMERICA” as being the petitioner (effectively the Plaintiff) without explaining or more particularly describing who of what that “UNITED STATES OF AMERICA” is.**
- 2.) The nature of the petition as presented seems to deliberately utilize an implication to the end that the unaware will assume that the “UNITED STATES OF AMERICA” is or refers to the federal government; and the gullible won’t question the subterfuge.**
- 3.) The facts are that as generally used the United States of America is an abstraction which refers to the fifty independent states which collectively comprise the union of States known by that name. The United States of America has never been constituted by law as a government in a sense of federal government; there is no government entity by that name.**

- 4.) Because there is no government entity by the name of the United States of America or UNITED STATES OF AMERICA; there is no “Petitioner” before the court which this court can recognize as an entity competent to proceed.
- As an alternative, there is a private non-profit corporation by the name of the “UNITED STATES OF AMERICA”. SEE: Attachment 1. Is this the entity which is the petitioner here? If so, jurisdiction in this court should be based in 28 U.S.C. §1332, diversity of citizenship.

II. Representation

- 5.) The Petition asserts that the attorneys are acting for the Petitioner (first paragraph), but such an assertion is false on its face in that “The United States of America” is not as a matter of law a public government entity which can sue or be sued. And that presents a problem under Rule 17 FRCvP in that the “United States of America” is not and cannot, as a matter of law, be the name of the real party in interest.
- 6.) Further, both attorneys claim to be “United States Attorney” or “Assistant United States Attorney” (first paragraph). The authority of United States’ Attorneys is indicated at 28 U.S. Code Section 547, which says in relevant part,
- “§547 – Except as otherwise provided by law, each United States attorney, within his district, shall — (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned.”**
- 7.) Because of the nature of the petition this proceeding is not one in which the United States is concerned. *Expressio unius est exclusio alterius*. And from that

the United States Attorneys have no authority to represent a petitioner under the name of “United States of America” and may not present such a petition into a court.

III. Inconsistent Pleading

8.) The attorneys have expressly claimed that an agency known as “Internal Revenue Service” is an agency of the petitioner, the “United States of America” (Petition, first paragraph).

9.) The individual, J. Norrenberns, is alleged to be a revenue officer employed by “Internal Revenue Service” (Petition, point 2). The context is such as to imply that the “Internal Revenue Service” is an agency of the federal U. S. government, which directly conflicts with the next above. But, additionally, it appears that the Congress has never created a federal governmental agency by the name of “Internal Revenue Service”.

A Study of Chapter 3 of Title 31 U.S. Code, which is positive law by virtue of the recodification in 1982, P.L.97-258, reveals that there is no listing or entry for “Internal Revenue Service” as a sub-division of the Department of the Treasury.

10.) If an agency known as “Internal Revenue Service” is an entity of the “United States of America” as claimed by the attorneys, then this court may not exercise jurisdiction under 26 U.S.C. §7402 or §7604 because the petition is not filed “at the instance of the United States”.

11.) If an alleged agency called “Internal Revenue Service” has never been created by the Congress, then it follows that as a matter of law there cannot be any

federal government OFFICE of the Internal Revenue Service located at St. Louis, Missouri, as alleged at point 2 of the Petition.

- 12.) And that raises questions concerning the status of the alleged revenue officer, J. Norrenberns, who is alleged to be a revenue OFFICER employed in the St. Louis, Missouri, office of the Internal Revenue Service. (Point 2)**

(a.) Is J. Norrenberns an OFFICER of the federal government as a matter of Law?

In the restatement, 1978 edition, 67 C.J.S., Officers and Public Employees, at section 6, page 232, "*There can be no de jure officer if there is no office or de jure office to be filled or occupied.*" Ref: Norton v. Shelby County, Tenn., 118 U.S. 425, 30 L.Ed. 178.

The exact words of the Supreme court in NORTON v. SHELBY county are:

"But it is contended that if the act creating the board was void, and the commissioners were not officers de jure, they were nevertheless officers de facto, and that the acts of the board as a de facto court are binding upon the county. This contention is met by the fact that there can be no officer, either de jure or de facto, if there be no office to fill. As the act attempting to create the office of commissioner never became a law, the office never came into existence. It is manifest that endless confusion would result if in every proceeding before such officers their title could be called in question.

But the idea of an officer implies the existence of an office

which he holds. It would be a misapplication of terms to call one an 'officer' who holds no office, and a public office can exist only by force of law. This seems to us so obvious that we should hardly feel called upon to consider any adverse opinion on the subject but for the earnest contention of plaintiff's counsel that such existence is not essential, and that it is sufficient if the office be provided for by any legislative enactment, however invalid. Their position is that a legislative act, though unconstitutional, may in terms create an office, and nothing further than its apparent existence is necessary to give validity to the acts of its assumed incumbent. That position, although not stated in this broad form, amounts to nothing else. It is difficult to meet it by any argument beyond this statement: An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

(118 U.S. at 441 & 442 underline emphasis added.)

In summation, it appears that the individual, J. Norrenberns, is not an OFFICER of the federal U. S. Government.

(b.) Is J. Norrenberns an EMPLOYEE of the federal government?

Similar as above, if Internal Revenue Service is not an entity of the federal government, then J. Norrenberns is not an EMPLOYEE of the federal government.

- 13.) It is noted that in a DECLARATION signed by J. Norrenberns under penalty of perjury, he declares (first paragraph), "I am a duly commissioned Revenue Officer employed in Small Business / Self-Employed-Midwest Area, Internal Revenue Service."**

But nowhere does J. Norrrenberns assert in his declaration that he is an officer or an employee of the federal United States. Likewise there is no statement in his declaration which asserts that “Internal Revenue Service” is an enitivity of the federal United States. One is left to assume those things.

- 14.) A close reading of the petition reveals that there are no statements which directly or positively allege that the individual, J. Norrenberns, is a bona fide officer, or employee of the federal government. Equally, there is no statement in the petition which directly or positively alleges that “Internal Revenue Service” is an entity, agency, or bureaucracy of the federal government. One is left to assume these things.**

A study of Title 31 U.S. Code, at chapter 3 et seq. wherein the statutory provisions relating to the federal U. S. Department of the Treasury are codified, will show that neither “Internal Revenue Service” nor “Bureau of Internal Revenue” are listed as being sub-divisions or agencies under or within the United States’ Department of the Treasury. Ergo, they do not lawfully exist.

- 15.) The absence of specific allegations is not mere oversight; it is telling. The attorneys involved here are not stupid; they know what should not be said so as to avoid embarrassing entanglements.**

The petition seems to be a “boilerplate” type carefully crafted so as to exploit the ignorance of the uninformed and to allow the unaware to assume to incorrect conclusions.

IV. No Authority

- 16.) The Respondent here is mindful of the instruction and warning given in Federal Crop Insurance v. Merrill, 322 U.S. 380, at 384:**

“Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.”

- 17.) It matters not how misled the individual, J. Norrenberns might be in regard any purported official authority. Where the so-called “agency” that he claims to be employed by (SEE: point 13, supra) or as alleged in the petition (SEE: point 9, ante) does not lawfully exist, it must follow that there is more than adequate cause to question whether he actually and lawfully has any authority.**
- 18.) In the petition it is alleged that J. Norrenberns “is authorized to issue an Internal Revenue Service (sic) summons pursuant to the authority contained in 26 U.S.C. §7602, and Treasury Regulation § 301.7602-1, 26 C.F.R. §301.7602-1.” From this allegation one comprehends that the sole source of authority for the issuance of such a summons is found in U. S. Code §7602 as implemented by a Regulation §301.7602-1. In other words, an alleged “Revenue Officer” does not have authority to issue such a summons merely by virtue of being an officer.**
- 19.) The relevant portion of 26 U.S.C. § 7602 says:**

**§7602. Examination of books and witnesses (a) Authority to summon, etc.
For the purpose of ascertaining the correctness of any return,**

making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized---

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. (*underline emphasis added*)

A superficial reading of the statute shows that "the Secretary is authorized---

(2) To summon the person liable---." Beyond doubt the alleged "revenue officer", J. Norrenberns does not have any statutory authority to issue an "Internal Revenue Service Summons" as alleged in the petition.

20.) Turning to the implementing Treasury Regulation as promulgated at 26 C.F.R. §301.7602-1, the relevant portion says:

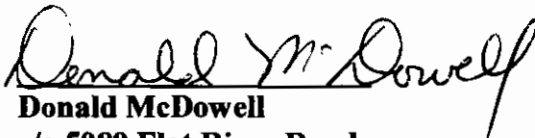
"(b) Summons—(1) In general. For the purposes described in Sec. 301.
7602-1(a), the Commissioner is authorized to summon the person liable"---
(underline emphasis added)

Clearly, the regulation impermissively conflicts with the statute (above) as to
who or what officer may issue a summons. But despite the conflict the result
is unmistakable that J. Norrenberns as a mere "revenue officer" as alleged in
the petition is not authorized to issue summons!

THEREFORE: Upon the above shown reasons the Order to Show Cause should be
vacated, and the Petition to Enforce Internal Revenue Service Summons should be
dismissed and perhaps with prejudice because of fraud in the petition.

Dated this 11 day of January, 2008.

Reserving all Rights and Liberties,


Donald McDowell
c/o 5089 Flat River Road
Farmington, Missouri 63640
1 573 576 7227

Missouri state)
St. Louis city) ss.
 county)

On this 11th day of January in the Year of Our Lord, Two Thousand Eight, before me, a Notary
Public in and for said state and county, personally appeared Donald McDowell, satisfactorily
identified/known to me and Donald McDowell declared that the contents of the above document are
true and correct upon best information and belief and acknowledged to me that he executed the
same for the purpose therein stated. I witness his signature and attest to the affirmation.

My commission expires 3/8/2010  Notary Public

Seal:



CERTIFICATE OF SERVICE

On 11th day of January, 2008, a copy of the "MOTION TO VACATE SHOW CAUSE ORDER And DISMISS THE PETITION" was hand carried to the Clerk of the Court for United States District Court, Eastern District of Missouri, Eastern Division, for filing in Cause No: 4:07MC583JHC, and a copy faxed to Catherine L. Hanaway, UNITED STATES ATTORNEY, through Wesley D. Wedemeyer, [4909] Assistant United States Attorney, 111 South Tenth Street, Room 20.333, St. Louis, Missouri 63102, Fax # (314) 539 2777 on January 10th, 2008.

**//s// Donald McDowell
Donald McDowell
c/o 5089 Flat River Road
Farmington, Missouri 63640
1 573 576 7227 phone**



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Entity Details

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File Number: **2193948** Incorporation Date / **04/19/1989**
 Formation Date: **(mm/dd/yyyy)**

Entity Name: **UNITED STATES OF AMERICA, INC.**

Entity Kind: **CORPORATION** Entity Type: **NON-PROFIT OR RELIGIOUS**

Residency: **DOMESTIC** State: **DE**

REGISTERED AGENT INFORMATION

Name: **THE COMPANY CORPORATION**

Address: **2711 CENTERVILLE ROAD SUITE 400**

City: **WILMINGTON** County: **NEW CASTLE**

State: **DE** Postal Code: **19808**

Phone: **(302)636-6440**

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ATTACHMENT 1