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4/25/2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF LAS VEGAS

UNITED STATES Plaintiff V IRWIN SCHIFF, CYNTHIA NEUN LAWRENCE N. COHEN, a/k/a/ LARRY COHEN, Defendants	CRIMINAL INDICTMENT CR-S-04-0119-KJD (LRL) MOTION TO DISMISS COUNTS 1 AND 17 FOR LACK OF JURISDICTION, SINCE BOTH COUNTS ARE E STEEPED IN FRAUD

Since on April 1, 2004, Defendant Schiff filed four motions as to why this Court has no *subject matter jurisdiction* that would allow this Court to criminally prosecute him for alleged violations involving income taxes – this motion should actually be superfluous, since it raises additional reasons as to why the Court would have no jurisdiction involving two specific counts – counts 1 ands 17- that should be dismissed anyway, for reasons previously given. However, Schiff feels compelled to file this motion since the government refuses to provide the documents (since they don't exist) that Schiff would need to defend himself against these specious charges, and because the government's inability to provide the documents specifically referred to in this motion dramatically reveals the extent and lawless character of the indictment as a whole. It is Schiff's claim that this Court cannot have subject matter jurisdiction to prosecute him pursuant to charges that are fraudulent and not supported by law on their ***very face.***

Count 1 charges Schiff (along with Neun and Cohen) of:

> Impeding, impairing, obstructing, and defeating, through deceitful and dishonest means, the lawful government functions of the Internal Revenue Service of the United States Department of Treasury in ascertaining, computing, assessing, and collecting taxes.

Since there is absolutely no mention of the Internal Revenue Service in subtitle A of the Internal Revenue Code[1], the IRS was given no statutory authority to "ascertain, compute, assess and collect income taxes" as is referred to in Count 1. Therefore, for the indictment to charge defendants with "impeding, impairing, obstructing, and the defeating" such "lawful functions" of the Internal Revenue Service as are listed above (when the government's attorneys had to know that no such "lawful functions" were ever given to the I.R. S. by any law) constituted an act of obvious fraud on the part of the Justice Department. The attempt by the Justice Department to perpetrate this degree of fraud with respect to Count 1 (and overlooking the additional fraud contained therein as shown below) – should, by any measure of justice and common sense, render the entire indictment "null and void," since the degree of fraud contained in count 1, must obviously also infuse other counts in the indictment, and since - "Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows,* 91 U.S 426. "Fraud vitiates everything," *Boyce v. Grundy*, 3 Pet. 210. "Fraud vitiates the most solemn contracts, documents and even judgments," *U.S. v. Throckmorton,* 98 U.S. 61. – the entire indictment must be thrown out.

I

LEGAL ARGUMENT

The Secretary of the Treasury is the only party given any authority, in the Internal Revenue Code, to assess and forcibly collect internal revenue taxes. [2] Therefore, before any I.R.S. employee can have any authority to assess and ***forceably*** collect income taxes, [3] the Secretary would first have to delegate such authority to the Commissioner of the Internal Revenue Service who would then have to redelegate such authority to lower level IRS employees. However, before any such Delegation Order from the Secretary of the Treasury to the Commissioner could have any "force and effect" with respect to the public, such a Delegation Order would have **to be published** in the Federal Register.

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[1] The first mention of the IRS in the Internal Revenue Code appears in Section 6404, and that section (which is in Subtitle F), deals with the abatement of taxes due to an "error or delay by an officer or employee in performing a ministerial or management act…" Thus, even here, the Code is careful not to even suggest that IRS agents can perform an act of "enforcement."

[2] However, the 1939 and earlier Codes did confer such power directly on the Commissioner of Internal Revenue, but all such authority was **removed** from the 1954 Code, when Congress sought to bring the 1954 Code in line with the Constitution and what early Supreme Court decisions specifically held was the legal significance of the 16th Amendment – which was that it gave no new power of taxation to Congress.

[3] Naturally government employees can be authorized to accept money voluntarily paid to the government for any reason.

A
THE SECRETARY HAS NEVER DELEGATED ANY AUTHORITY TO THE COMMISIONER OF THE I. R. S. TO ASSESS AND FORCIBLY COLLECT INCOME TAXES[4]

26 U.S.C. 7701(11) & (12) provide that when the term Secretary is used in the Internal Revenue Code it "means the Secretary of the Treasury or his delegate," or "any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority." It is Defendant's claim that:

1) The Secretary of the Treasury has never delegated any authority to the Commissioner of Internal Revenue to: (1) assess income taxes; or (2) forcibly collect such income taxes; and (3) the government will not be able to produce any such delegation of authority.

2) In addition, it is Defendant's claim that no such delegation of authority (if one is fraudulently produced) was ever **published** in the Federal Register – and the government will not be able to produce proof of any such publication.

3) Since the Commissioner was not given any lawful authority to "assess" and collect income taxes (by compulsion), no such "lawful" authority could have been "redelegated" to lower level IRS employees.

4) Consequently all of the above charges as contained in paragraph 9 of the indictment were fraudulently alleged by the Justice Department, just on this ground alone.

B

ADDITIONAL LEGAL ARGUMENT AS TO WHY COUNT 1 MUST BE DISMISSED AND WHY COUNT 17 MUST BE DISMISSED AS WELL

While the above facts provide all the legal grounds needed for the Court to dismiss count 1, there are other grounds (apart from the one raised in footnote 4) that support and explain why:

[4] Another reason why the Secretary could not have delegated any authority to the Internal Revenue Service is because the I.R.S. does not legally exist as an agency of the federal government. While the office of the Commissioner of Internal Revenue was created by the Tax Act of July 1, 1862, Congress has never passed a law establishing the Internal Revenue Service as an agency or department of the federal government or Treasury Department. Therefore, how could defendants have "impaired or obstructed" an agency that does not legally exist from doing anything?

(1) no such delegation of authority was ever given to the Commissioner of Internal Revenue by the Secretary; (2) why such a delegation of authority cannot even legally exist; and (3) why count 17 must also be dismissed on the ground that it too was fraudulently alleged.

Subchapter A of Chapter 63 of the Internal Revenue Code is entitled "Assessment," and it is this Subchapter that confers upon the Secretary of the Treasury whatever power he might have to assess and compel the payment of federal taxes; however, this Subchapter **denies** the Secretary **the power to assess income taxes**. Therefore, this is a power the Secretary does not have, and thus he can not delegate such a power to the Commissioner of Internal Revenue. The Secretary was denied the power to assess income taxes by section 6201(a), the very first subsection in Chapter 63, and is entitled "**Authority of Secretary.**" It states, in pertinent part, as follows:

> The Secretary is authorized and required to make the ….assessments of all taxes …imposed by this title …which have **not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall **extend to and include the following.** (Emphasis added)

Therefore, the only "authority" which was given to the Secretary in Section 6201(a) was the power to assess those federal taxes "which have not been duly paid ***by stamp***." [5] Since income taxes are not "paid by stamp," the Secretary was given no statutory authority to assess income taxes.[6] Proof of this is further provided by Exhibit A. It consists of two pages from the CFR Index. It shows that the implementing regulations for section 6201 (as well as 6203, 6204, 6303, and 6331-6343) are only contained in 27 CFR. There are no references that implementing regulations for this statute are *also* contained in 26 CFR, even though *duel entries* are shown, for such other Code sections as 6061, 6109, 6325, and 6404. Therefore, the Secretary cannot even delegate an authority to the I.R.S. to assesses income taxes - and Exhibit A proves that the Secretary has, indeed, not done so.

Since the Secretary was given no statutory authority to assess income taxes, all income tax assessments made by the IRS against Schiff over the years **have all been illegal and were not authorized by law**. In addition the "notice and demand" for payment, (as required by such

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[5] And it was *only* this power that was "extended" to all those assessment sections and subsections that followed.

[6] Since the Code "knows" that the income tax is not imposed pursuant to any of Congress' constitutional powers to "lay and collect taxes" (as shown in Schiff's prior motions to dismiss) the Code, understandably, denied conferring any power to the Secretary to assess a tax which is not imposed pursuant to those constitutional powers. This is why the Code does not contain any provision making anyone "liable" for income taxes or requiring anyone "to pay" such an alleged tax.

Code sections as 6303, 6321 and 6331) which must be sent out "within 60 days, after the making of an assessment" can never *legally* be sent out with respect to income taxes, because such a "demand," can only be made following a lawful assessment.[7] Since no "notice and demand" for the payment of income taxes can lawfully be made (and such a "demand" for payment is **never** sent out), no IRS agent can lawfully be authorized to seize property in payment of income taxes, since Section 6331 makes all tax seizures dependant on: (1) the existence of a tax "liability," and (2) a failure to pay the tax "within 10 days after notice and demand." Based on all of the above, it is clear that all of the income tax assessments (and penalties) which were made against Defendant for the years 1979 - 1985 were made illegally. In addition, since Defendant was never sent the statutory "notice and demand" for payment for any taxes allegedly due for the years 1979- 1985 (as identified in Treasury Decision 1995), he could not have sought to "evade and defeat" such taxes as alleged in count 17 because (1) they were never lawfully assessed; and (2) they were never lawfully "demanded." Therefore these charges as contained in count 17 are also *fraudulent* and *erroneous* ***as a matter of law*** – and must, consequently, be dismissed just for this reason alone, and overlooking all of the other reasons why they should be dismissed.

In addition, a number of the allegations in support of count 17 are also based on fraud. For example: assuming, arguendo that the Secretary were authorized by law to assess and compel the payment of income taxes, and assuming such powers were delegated to the Commissioner[8] who in then "redelegated" them to lower levels of the I.R.S., proof of such a redelegation of authority would be reflected in: (1) a "delegation order," as well as being supported and confirmed by; (2) Treasury Department regulations; (2) job descriptions, and (3) pocket commissions. However no I.R.S. special agent or revenue officer was ever given any authority (as Justice Department lawyers have to know) by any: Treasury Department regulation,; (2) by any job description; or (3) by any "pocket commissions" that would allow

[7] Since the income tax "laws" themselves are lawfully written (they are only unlawfully enforced) a "notice and demand" for payment is ***never*** sent out. Why would the "law" allow the government to "demand" payment of a tax that the "law" itself: (1) does not allow to be assessed; (2) for which it made no one "liable"; and (3) with respect to "income" that the law made sure no one could ever receive? As identified in Treasury Decision 1995, the statutory notice and demand for payment is IRS Form 17 – and that form is never sent out by the IRS. Since Treasury Decision 1995 has never been revoked or replaced, IRS Form 17 still remains the statutory "notice and demand" for payment called for by such statutes as 6303, 6321, and 6332. However, the IRS never sends out the statutory "notice and demand" for payment – for reasons already explained.

[8] Obviously the IRS can accept money given to it voluntarily, but none of the $300,000 plus dollars that the IRS has confiscated from the defendant over the last 25 years was ever paid to the government voluntarily. So obviously, the government acquired such funds from Defendant in a manner not essentially different from how Jessie James, John Dillinger and Genghis Kahn acquired funds.

him/her to enforce the payment of income taxes by levy. And the Justice Department will not be able to produce any such documentation to refute Defendant's claim on this issue. [9]

Therefore, it is clear that none of the revenue officers, nor any of the ten, gun carrying special agents who took part in the seizure of defendant's 1989 Chrysler automobile, as described in paragraph 39 of the indictment, had any authority to do so.[10] If defendant Schiff "interfered with the execution of (the) levy" as alleged in that paragraph, it was because he knew that the agents involved had absolutely no legal authority to enforce the payment of income taxes by: (1) seizing his automobile; (b) carrying the firearms he saw them to be carrying ; or (3) to mace him as they did. - all of which (and more) Schiff put in a response to the seizure of his automobile and to the three felony counts which were lodged against him at that time. Defendant Schiff knew (unlike the general public who has been mislead to believe that I.R.S agents have such seizure authority) that all of the I.R.S. agents who took part in that seizure were not authorized to do so, but were merely operating under color of law. [11] The Justice Department dropped the three felony charges, since Schiff insisted on going before the grand jury where the Justice Department realized Schiff could prove that all the agents involved in that seizure were operating outside the law – in other words they were actually "outlaws" masquerading as law enforcement officers. [12]

The fact that Defendant had put funds in a Pill Trust was obviously not done to "conceal assets" [13] It was done to place funds where hopefully I.R. S. "outlaws," acting under color of law, could not reach and confiscate with their phony and benign "notices of levy" – which banks do not have to honor, but which all U.S. banks - ignominiously and lawlessly - do honor. Since the government will not be able to produce any document (such as a statute, Treasury Regulation, job description, or pocket commission) that would establish that I.R.S. agents have

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[9] Defendant Schiff has already shown in his Motion to Suppress (which this Court has yet to rule upon) that both I.R.S special agents and revenue officers must fall into subsection (a) of Code Section 7608. (Magistrate- Judge Leavitt **already agrees**, as shown in his Report and Recommendation # 43, that special agents fall into 7608(a)) and, as such, if they have any enforcement authority at all, it can only apply for the "Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms" - but not to income taxes. And revenue officers must also fall into this subsection, so they **too** can only be authorized to enforce subtitle E taxes and "other laws pertaining to liquor, tobacco, and firearms" – but not income taxes.

[10] In addition, the seizure was done on private property without a search warrant

[11] It is not for no reason defendant's last book was entitled: ***The Federal Mafia: How the Government Illegally Imposes and Unlawfully Collects Income Taxes.***

[12] When I filed a complaint with the local police charging the IRS with car theft, the local police refused to do anything about it. This is why IRS agents ca n steal at will.

[13] All of Defendant's transfers to the Pill Trust were done openly through his checking account and a wire transfer is simply a more convenient way and faster way to secure funds from an offshore bank.

any authority to levy property in payment of income taxes – any suggestion or claim in any paragraph in the indictment that seeks to allege that Schiff sought to conceal assets in order to prevent their ***lawful*** seizures by the I.R.S. is ***blatantly*** fraudulent and ***contrary to law.*** The I.R. S. does not lawfully "levy" and seize property, they lawlessly extort and steal property. Proof of this is that the government will not be able to produce: (1) one law, or (2) Treasury Regulation, or (3) any official document that authorizes I.R.S agents to seize property by levy in payment of income taxes.

The government has already stolen over $300,000 from Defendant over the last 25 years (see Exhibit B – which is substantially incomplete) by availing itself of the type of unauthorized seizures the I.R.S. is allowed to get away with. If one knew there was a band of thieves operating in the neighborhood, would one be illegally "concealing" their valuables if, instead of leaving them exposed on the kitchen table, one put them away where hopefully the thieves could not get at them.? Since IRS revenue officers have no authority to seize property by levy – how are they any better than your run-of-the-mill thief?

Therefore, based on the inability of the Justice Department to produce ***any*** document such as: a statute, a Treasury Regulation (which has the force and effect of law), a job description, or an enforcement pocket commission, that would show that Internal Revenue Officers are authorized to levy and seize assets in payment of income taxes, (as inferred and alleged in paragraphs 36, 37, 38, 39, 40, 41, 42, and 43 of the indictment) the entire Count 17 of the indictment is infused with fraud, and therefore must be dismissed. This court obviously does not have subject matter jurisdiction to conduct a criminal trial based upon allegations that are clearly fraudulent and not supported by any law, any Treasury Department regulation, nor any official documentation of any kind.

WHEREFORE, premises considered counts 1 and 17 must be dismissed for fraud and lack of subject matter jurisdiction for all the reasons as described above

ORAL ARGUMENT REQUESTED

Dated: April 26 , 2005

Respectfully submitted

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Irwin A. Schiff, pro per

CERTIFICATION OF SERVICE

I certify that I have this date hand delivered a copy of the foregoing Motion to Dismiss Counts 1 and 17 to MELISSA SCHRAIBMAN and have this day mailed copies of this Motion to all parties in this action at their respective law offices.

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