

1 Dave Champion
1031 W. Ave. M14, Suite A
2 Palmdale, CA 93551
3 (661) 210-5733

4 United States District Court
5 Central District of California
6

7
8 United States of America,
9 Petitioner,

10 v.

11 David Champion,
12 Aggrieved Party

) Case No.: Case 2V08-01629-PA-JWJx
) Motion To Dismiss For Want of
) Jurisdiction in the form of a Special
) Appearance
)
) Hearing Date: April 28, 2008
) Time: 1:30PM
) Courtroom: 15
) Before the Honorable Percy Anderson
)

13
14 Now comes the Aggrieved Party, David Champion, in his personal capacity
15 and without counsel, for the purpose of the Hearing set for April 28, 2008, in
16 courtroom 15, before the Honorable Judge Perry Anderson, seeking remedy for
17 actions committed and/or omitted by the United States of America in its Petition
18 for Enforcement of Summons, which constitutes an impermissible assault upon the
19 Rights of the Aggrieved Party and an affront to the dignity and integrity of this
20 honorable Court.

21 The crux of this opposition to jurisdiction is simple. First, and quite
22 importantly, the government has failed to meet its burden of setting forth clearly
23 and succinctly the statute, ordinance, case law, administrative regulation, or other
24 law against which the alleged “facts” in Mr. Cheung’s declaration must be
25 measured to determine whether jurisdiction lies as to the undersigned. Simply
26 stated, it is the government’s burden to demonstrate that this Court has jurisdiction
27 in this matter under some law, and that the undersigned is an individual who falls
28 into a class of person subject to that law. Absent such a showing, this case must be

1 dismissed under Federal Rules of Civil Procedure, Rule 12(h)(3) which states that:
2 “If the court determines at any time that it lacks subject matter jurisdiction, the
3 court must dismiss the action.”

4 Just as importantly, the government has failed to offer any evidence in
5 support of its purported prima facie showing in its petition to enforce the summons
6 in this matter. Despite Thomas Cheung and Helen Tran having conducted a
7 recorded and sworn interview of the undersigned for three hours in 2006, the
8 government has failed to include a single quote from that interview in support of
9 its petition. Frankly, that would make the undersigned the first individual in the
10 history of this land to speak to an IRS agent for three hours and not offer a single
11 incriminating quote, which is astounding. There is an absolute certainty that, if the
12 undersigned had said anything incriminating or that would subject him to the
13 jurisdiction of the IRS, that Mr. Cheung would have included such evidence in his
14 declaration, verbatim, in quotation marks. The absence of any such evidence
15 presented by Mr. Cheung dispositively establishes that none exists. Mr. Cheung’s
16 declaration merely states inadmissible legal conclusions that cannot, by any honest
17 assessment, constitute a prima facie showing of anything.

18 Similarly, Mr. Cheung has made reference to my radio show and website.
19 Hundreds of hours of my radio show are available online. Mr. Chueng, however,
20 has failed to render a single quote in his declaration from my radio show or from
21 my website in his declaration which, again, supports the conclusion that there is
22 nothing incriminating to be quoted therefrom. It is a principal of law that a party
23 who could have brought better evidence but failed to do so did not have better
24 evidence in the first place. The undersigned respectfully requests that the Court
25 bear this principal in mind in reviewing the government’s petition.

26 Such a review by the Court should lead to the conclusion that the following
27 defenses apply in this matter under Rule 12(b): 1) lack of subject-matter
28

1 jurisdiction; 2) lack of personal jurisdiction; 4) insufficient process, 5) insufficient
2 service of process, and 6) failure to state a claim upon which relief can be granted.

3 **Representing Self**

4 I am representing myself in this matter due to the government's disregard for
5 this honorable Court's orders regarding service of the Petition upon me. This
6 honorable Court ordered the government to affect service "promptly" after March
7 19, 2008. With total disregard for this Court's order, the government did not affect
8 service on me until April 3, 2008. Between April 3rd and the time I have been able
9 to begin to write this Motion (April 16th), I have of necessity been out of town
10 seven (7) days. The government has left me in a position of having only 7 business
11 days to acquire counsel. I have not been able to acquire counsel in that short
12 period.

13 As I am representing myself, I ask the Court to indulge the differences and
14 distinctions that may come with being forced to defend myself, as opposed to
15 having professionally trained counsel doing so. I ask the Court to take note that as
16 I am not a formally trained legal professional it will take me longer (more pages) to
17 characterize my position than it might a seasoned member of the BAR.

18 Additionally, my language may not be as subtle or artful as that of a trained
19 member of the BAR. Further, due to the terribly narrow time constraints under
20 which I must operate due the government's failure to follow this honorable Court's
21 order regarding service, I have neither the skill nor the time to research citations in
22 support of the positions I put forth. I will attempt to mitigate this last concern by
23 relying on legal doctrines that are so well established that no citation should be
24 required. And lastly, my submission to the Court may not be formatted or laid out
25 as would that of a seasoned attorney who understands the proper protocols for
26 practicing before this honorable Court.

27 I also ask this honorable Court to waive the part of its Standing Order which
28 states that "Filings which do not conform to the Local Rules and this order will not

1 be considered.” Because I have not been able to find counsel who wish to take up
2 this matter I have been forced to do the work myself. I am not a trained BAR
3 attorney. I have neither the assets nor the training to do the job in the time frame in
4 which a professional lawyer could respond. And lastly, the attorneys for IRS and
5 DOJ are paid to do this for a living. I must continue to provide food, shelter and
6 clothing for myself while working on this in the time that remains. That is a
7 crushing handicap.

8 I pray this honorable Court will take into account the harsh burden that has
9 been placed upon me by the government’s failure to obey this honorable Court’s
10 order concerning service of the Petition, and will grant me the fullest latitude
11 appropriate to these difficult and wholly unnecessary circumstances.

12 **Special Appearance**

13 I make this appearance before this honorable Court in the form of a Special
14 Appearance because to make a General Appearance (as I understand it) would
15 signal my acquiescence to this honorable Court’s jurisdiction in this matter. I do
16 not so acquiesce for the reasons that will be stated shortly. By making a Special
17 Appearance I am preserving and exercising my right to challenge this honorable
18 Court’s jurisdiction.

19 **Traversing the Facts**

20 I have no desire to traverse the facts in the government’s petition, thus flirting with
21 a general appearance. However, within the scope of this Special Appearance it
22 will be necessary for me to traverse the facts offered by the government in its
23 Petition to the extent necessary to show that the government’s representations are
24 completely and demonstrably false and thus have not invoked the statutory
25 jurisdiction granted this honorable Court by Congress.

26 **Jurisdiction Generally**

27 It is a well-settled doctrine of law that a court’s jurisdiction is invoked by the
28 “Sufficiency of the Pleading”. In the instant matter the government contends that

1 this honorable Court derives its subject matter jurisdiction from 26 USC §7402(b)
2 and 7604(a). I acknowledge that the government has artfully presented a prima
3 facie case for this honorable Court to assume subject matter jurisdiction in this
4 matter. The problem is that not one single purported fact contained in the
5 government's Pleading, that serve to establish the elements necessary to create the
6 "sufficiency of the pleading" and invoke the subject matter jurisdiction of this
7 honorable Court, are remotely accurate or true. Every one of the purported facts
8 put forth as an element needed to establish this honorable Court's subject matter
9 jurisdiction are false.

10 More pointedly, every false statement put forth by the government in its
11 effort to establish jurisdiction were known to the government to be false at the time
12 they were put forth to this honorable Court. The government knows, or has every
13 reason to know, that each of its averments intended to establish jurisdiction in this
14 matter are completely false and without merit. The government has knowingly,
15 willfully, and intentionally committed fraud upon this honorable Court. In plain
16 speaking, they are attempting to sell this honorable Court a pack of lies. I am aware
17 of the seriousness of such a charge and I am mindful not to make such a charge
18 lightly as it would show disrespect for this honorable Court. I believe that the
19 evidence shouts out the conclusion that the government has intentionally,
20 knowingly, and willfully committed fraud upon this honorable Court and I have
21 every confidence that upon examination of the evidence this honorable Court will
22 agree with this charge.

23 **Jurisdiction in the Instant Matter**

24 In the instant matter the government contends that this honorable Court
25 derives its subject matter jurisdiction from 26 USC §§ 7402(b) and 7604(a). There
26 is no statutory basis for subject matter jurisdiction under either of those two
27 sections.
28

1 Sections 7402(b) and 7604(a) deal with enforcement of summons under the
2 Internal Revenue laws of the United States and grants the United States District
3 Courts jurisdiction in such cases, respectively.

4 The Treasury Department's power to summons the books and records (26
5 USC 7602) does not grant the Secretary of the Treasury the powers of a "General
6 Warrant" in society at large. The power granted to the Secretary of the Treasury
7 by Congress under its Constitutional power to tax cannot transcend its power of
8 taxation. In short, there must be some reasonable and articulatable nexus to the
9 Internal Revenue laws of the United States for the Secretary's power to summons
10 books and records to be used lawfully and within Constitutional limits. This
11 should be so plainly obvious as to require no further discourse.

12 Within the regulatory scheme of the internal revenue laws of the United
13 States the Secretary's discretion to summons books and records is broad. However,
14 without the regulatory scheme of the internal revenue laws of the United States the
15 Secretary has no authority whatsoever to summons under §7602 or for any other
16 tax related purpose. That is the pivotal question that I now place before this
17 honorable Court. I will detail the false statements made to this honorable Court by
18 the government in order to create the false impression that a nexus exists to the
19 internal revenue laws of the United States, when in fact no such nexus exists.

20 **The Government's Investigatory Claim**

21 The government contends that it has been conducting an investigation of me
22 for potential violations of 26 USC §§ 6694, 6695, 6700 and/or 6701.

23 This honorable Court is certainly aware of the phrase "outcome based law"
24 in which a court rules on a matter based on political expediencies and in doing so
25 rejects both the facts and the law. Such rulings are plainly lawless. The
26 investigative corollary to that is the "outcome based investigation"; an
27 investigation in which inconvenient facts are rejected or not pursued and lies are
28 put forth as facts while the law is manipulated in order to achieve a political

1 objective rather than serve the purposes for which the laws were created and
2 which, when properly applied, render justice.

3 The most recent such “outcome based investigation” to gain national
4 notoriety was the U.S. Army’s shameful investigation into the death of U.S. Army
5 Ranger Pat Tillman in which the Army willfully, knowingly, and intentionally
6 falsely declared that Tillman died as a result of enemy fire when the official record
7 proved that the Army knew Tillman had been killed by the “friendly fire” of his
8 fellow Rangers in the 3rd Ranger Battalion; a unit with which I was formerly
9 privileged to serve. The “investigation” the government alleges it has been
10 conducting against me is exemplary of a Tillman-like “outcome based
11 investigation”, with the facts and law being sacrificed to a political agenda.

12 Approximately twenty six (26) months ago, I voluntarily met with IRS
13 Revenue Agents Helen Tran and Thomas Chueng (and an unknown IRS Area
14 Counsel) based on their expressed concerns that I might be violating §§ 6694,
15 6695, 6700 and/or 6701. I chose to voluntarily meet with Tran and Chueng
16 because I knew that I had nothing whatsoever to do with the internal revenue laws
17 of the United States, and thus could not possibly be in violation of §§ 6694, 6695,
18 6700 and/or 6701. I felt that as a law-abiding citizen I should assist the IRS in
19 clearing up any misconceptions it might have had about any of my activities.

20 I met with the IRS for approximately three (3) hours. Before being sworn in
21 I asked for and received their assurance that being sworn in did not indicate in any
22 manner, or create any presumption, that I had any connection to the internal
23 revenue laws of the United States. I stated that if being sworn in did contain such
24 inference or presumption, I would decline to be sworn. Chueng, Tran, and Area
25 Counsel agreed that there would be no such inference or presumption from the act
26 of being sworn or providing testimony. I attended the meeting with a witness.

27 During the three (3) hour meeting the IRS plied me with endless questions
28 about my personal life and my personal financial situation. The IRS’s questions

1 were wholly irrelevant to the issue of a violation of §§ 6694, 6695, 6700 and/or
2 6701. I continually asked that we speak of the elements of the potential violations
3 that were the alleged purpose of the meeting. Tran (who was the agent doing most
4 of the questioning/talking) repeatedly stated that the IRS would not discuss
5 anything with me concerning §§ 6694, 6695, 6700 and/or 6701! If the IRS had a
6 sincere interest in potential violations of §§ 6694, 6695, 6700 and/or 6701 this
7 would have been the perfect time to raise them with me. After all, such a violation
8 would be civil in nature and therefore it is reasonable to resolve any such violation
9 by discussion, moving to court action only if reasonable discussions fail to produce
10 a suitable resolution. Despite this reality, the IRS officers present at the meeting
11 (and Area Counsel) refused to discuss §§ 6694, 6695, 6700 and/or 6701 with me
12 after requesting the meeting under that pretense.

13 Further, during said 3 hour meeting with the IRS, I stated plainly that if the
14 IRS had any concerns that I was in violation of §§ 6694, 6695, 6700 and/or 6701
15 they should put their concerns in writing at their earliest opportunity and mail them
16 to me. I told the IRS that I would then retain counsel to review the matter and I
17 felt 100% certain that any concerns the IRS may have could be suitably resolved to
18 the satisfaction of all parties. As I sit here writing this Motion I have yet to receive
19 any indication from the IRS that it actually believes I am in violation of §§ 6694,
20 6695, 6700 and/or 6701.

21 Despite refusing to discuss any potential violations of §§ 6694, 6695, 6700
22 and/or 6701 with me during the meeting attended for precisely that purpose, and
23 after declining my sincere invitation to resolve any concern the IRS may have had
24 concerning §§ 6694, 6695, 6700 and/or 6701, they are before this honorable Court
25 attempting to manipulate this Court using the same false pretense.

26 At this point the IRS's conduct begs the question, is the IRS credible in this
27 matter? I will now address that question.
28

1 At page 2, line 11, of Revenue Agent Chueng's Declaration In Support Of
2 Petition To Enforce Internal Revenue Service Summons, Chueng states, "...it
3 appears that David Champion promotes an abusive scheme in which he frivolously
4 claims that United States citizens do not need to pay federal income tax unless they
5 voluntarily change themselves from 'nontaxpayers' to 'taxpayers'".

6 Let me begin by stating that if I were to make such a claim – which I have
7 never done – it would indeed be frivolous and might arguably constitute the
8 promotion of an abusive tax shelter. In rebuttal to Chueng's absurd statement I
9 have attached to this Motion fifty (50) declarations in which individuals who've
10 had occasion to hear me speak on the income tax attest to the fact that I have never
11 said such a thing, and in fact that I have said exactly the opposite. (There would
12 literally be hundreds of such declarations had the government not failed to obey
13 this honorable Court's order concerning the timing of serving me.)

14 How can it be that so many people have heard me so clearly yet Chueng
15 comes before this honorable Court promoting a blatant falsehood? It is the same
16 pretense that Tran and Chueng employed in their 3 hour meeting with me. It
17 matters not what the truth is, it only matters that Chueng says whatever will
18 promote the IRS's politically driven agenda in this matter.

19 And I respectfully raise the fact before this honorable Court that once the
20 trier-of-fact has determined that a witness has lied, the trier-of-fact is free to hold
21 that all the witness's statements are lies.

22 Chueng also alleges in his declaration that I promote the position that
23 "United States citizens do not have to pay federal income tax if they voluntarily
24 change themselves from "nontaxpayers" to "taxpayers". Where does Chueng get
25 this nonsense! I can only imagine that Chueng is attempting to create the picture
26 by implication that I believe in some frivolous tax protestor argument such as the
27 infamous "861 position". Again, this is the IRS attempting to mislead the Court in
28 the same exact manner as it attempted with me during my 3 hour meeting with

1 Tran and Chueng. At the outset of that meeting Tran began by stating that in the
2 course of my activities I use the “861 position” to encourage taxpayers to...(fill in
3 typical tax protestor gibberish). I waited until Tran was done with her ridiculous
4 and fallacious statement and then told her and Chueng that nothing I do has
5 anything remotely to do with silly [frivolous] tax protestor arguments such as the
6 861 position. Here we are two plus years later and Chueng is trotting out the same
7 old false position, insinuated now by implication, that he already knows is 100%
8 false – except this time he isn’t attempting to trick me, but instead is attempting to
9 mislead this honorable Court. As I mentioned at the outset of this Motion, it should
10 be readily apparent that the IRS has nothing valid to offer in this matter so they
11 have chosen to provide this honorable Court with nothing more than lies.

12 Chueng does tell the truth (amazingly) in one short part of his declaration.
13 On page 2, line 8, Chueng states, “The purpose of the investigation also includes
14 the determination of...whether there are other parties who are liable for federal
15 taxes. As of the date of this declaration, I have not made any of the determinations
16 referred to in the immediate preceding paragraph.” Of course Chueng hasn’t made
17 any such determinations; Chueng has not one shred of evidence that any client of
18 mine (if any) has the slightest nexus to internal revenue laws of the United States,
19 which is of the course the core issue underlying this Motion to Dismiss.

20 A prudent man will consult the contract to determine what his duties or
21 obligations are in a particular business situation that is the object of the contract.
22 Likewise, a prudent man would have to consult the internal revenue laws of the
23 United States to determine whether he is required to file a tax return or pay a tax
24 contained within the internal revenue laws of the United States. If a man
25 determines that he is liable for a tax contained within the internal revenue laws of
26 the United States, then he plainly falls with the general definition of “taxpayer”
27 found at 26 USC §7701(a)(14): “The term ‘taxpayer’ means any person subject to
28 any internal revenue tax.”

1 It should be equally apparent that if a man consults the internal revenue laws
2 of the United States to determine whether or not he is required to file a return or
3 pay a tax, and determines that Congress has not imposed any internal revenue tax
4 upon a class of person that embraces him, or has otherwise been made liable, then
5 he would be a “nontaxpayer”, i.e. a person not subject to any internal revenue tax.
6 Chueng attempts to mischaracterize this very simple, logical, lawful and common
7 sense process as some illegal slight-of-hand. Again, the fraud upon the Court is
8 abundant.

9 It should be noted that I do not involve myself in any way with anyone’s
10 determination as to whether Congress has or has not imposed a tax upon him under
11 the internal revenue laws of the United States or otherwise made him liable for a
12 tax. That is not my place. It is beyond my purview. I have no legal right to do so.
13 I do not do it.

14 When Chueng says in his Declaration that “David Champion promotes an
15 abusive scheme in which he frivolously claims that United States citizens do not
16 need to pay federal income tax unless they voluntarily change themselves from
17 ‘nontaxpayers’ to ‘taxpayers’”, he is simply flat out lying. This can be verified by
18 the numerous attached declarations.

19 Not only is Chueng’s premise ridiculous – that I say U.S. citizens are
20 immune from income tax by waving around a magic “nontaxpayer” wand – but I
21 also do not “promote” anything except the belief that people should study the law
22 and determine for themselves what their obligations are, or are not, in relationship
23 to the internal revenue laws of the United States. Have we reached the time in
24 America where suggesting that citizens educate themselves for the purpose of
25 determining their legal obligations is restricted speech or is somehow magically
26 transformed into a regulated or regulatable activity? Is it now within the regulatory
27 reach of the Secretary of the Treasury to summons a citizen’s private records (not
28 involved in any regulated or regulatable activity) simply because said citizen

1 advocates that Americans educate themselves concerning their obligations, or lack
2 therefore, under the internal revenue laws of the United States?

3
4 Here is a quote universally attributed to U.S. Supreme Court Justice Louis
5 D. Brandeis:

6 "I live in Alexandria, Virginia. Near the Supreme Court chamber is a toll
7 bridge across the Potomac. When in a rush I pay the dollar toll and get home
8 early. However, I usually drive a free bridge outside the down- town section
9 of the city, and cross the Potomac on a free bridge. The bridge was placed
10 outside the downtown Washington D.C. area to serve a useful social service:
11 getting drivers to drive the extra mile to help alleviate congestion during
12 rush hour. If I went over the toll bridge and through the barrier without
13 paying the toll, I would be committing tax evasion. If, however, I drive the
14 extra mile and drive outside the city of Washington, I am using a legitimate,
15 logical and suitable method of tax avoidance, and I am performing a useful
16 social service by doing so. For my tax evasion, I should be punished. For my
17 tax avoidance, I should be commended. The tragedy of life today is that so
18 few people know that the free bridge even exists."

19
20 For the sake of simplicity I will use Justice Brandeis's toll bridge story as an
21 analogy to help clarify the facts in the instant matter.

22 Some people have examined the internal revenue laws of the United States
23 and determined that they are "not required to use the toll bridge". Their
24 determination has nothing to do with me. In fact, their determination must be
25 made before they ever speak with me. If a person contacts me and has not made a
26 determination as to their obligations under U.S. tax law, I refuse to speak with
27 them. If they tell me they have determined they are within a class of person upon
28 whom Congress has imposed the income tax, or have otherwise been made liable, I

1 refuse to speak with them and suggest they contact a tax professional who is
2 authorized to practice before the Internal Revenue Service.

3 Although some U.S. citizens have determined that they are not required to
4 use the toll bridge, they are unsure of how to safely navigate to the free bridge.
5 They come to me and ask for a map to the free bridge. They also ask what rules
6 are operative for the free bridge. Is it passenger vehicles only? Can a 1-ton truck
7 cross the free bridge? Are special tires required? Is there a limit to the number of
8 passengers in the car? Etc, etc. Because I do not wish to interfere in the legitimate
9 revenues of the Toll Bridge Agency, I only sell the maps, guidelines, etc. to those
10 who have already made a firm legal determination that they are not within a class
11 of person required to use the toll bridge.

12 The Toll Bridge Agency does not like it when people determine that they are
13 not required to use the toll bridge because such determinations reduce the
14 Agency's revenues.

15 Some citizens have studied the toll bridge laws and have made their own
16 legal determination that they are not within the class of person required to use the
17 toll bridge. The Agency is not concerned with what the law requires or doesn't
18 require; it is only concerned that revenues are not reduced and that all drivers must
19 now be coerced into using the toll bridge by methods lawful or otherwise.

20 The Agency does not know which drivers have stopped using the toll bridge
21 due to the drivers' legal determination that they are not within the required class of
22 persons. Furthermore, without knowing the identities of the drivers who have
23 made such a determination the Agency has no knowledge whatsoever as to
24 whether those drivers are within the required class of person. The Agency decides
25 to take the perspective that all drivers must use the toll bridge unless the Agency is
26 consulted in advance and agrees that the driver is not within the required class of
27 person. Because the Agency has made the political decision that there can be no
28 reduction in Agency revenues, the Agency consistently determines that all drivers

1 are with the defined class of person who is required, even though that is not what
2 the law says. Citizens quickly become wise to the fact that the “game is rigged” at
3 the Agency and stop engaging in prior consultation (which was never a legal
4 necessity anyway because the law only states that drivers who are within the class
5 of person shall use the toll bridge). The Agency realizes that even with its coercive
6 methods it is losing the battle. It looks for new coercive methods, lawful or
7 otherwise.

8 The Agency knows that I sell maps showing the location of the free bridge
9 and I furnish information pertaining exclusively to the free bridge (but not the toll
10 bridge) to only those drivers who’ve made their own legal determination that they
11 are not within the class of person required to use the toll bridge.

12 I have long since determined that I am not a man within the class of person
13 required to drive on the toll bridge and so I have steered clear of it for many years
14 and never drive upon it, and the Agency has no knowledge that anyone I’ve ever
15 sold a map to or furnished additional information concerning the free bridge is
16 within the class of person required to use the toll bridge.

17 Despite lacking even a shred of evidence that I am within the class of person
18 required to use the toll bridge, or that those I’ve assisted are within the class of
19 person required to use the toll bridge, the Agency demands [summons] a list of
20 those to whom I’ve sold the map or furnished other useful pieces of information
21 concerning the free bridge and uses words/terms such as “taxpayer” and “evade”
22 when speaking of those who are not using the toll bridge.

23 The only explanation for the Agency’s irrational conduct is that it believes it
24 is appropriate for it to simply “presume” that all drivers are required to use the toll
25 bridge and then demand that all drivers who wish to use the free bridge “prove”
26 they are not required to use the toll bridge. This is as absurd as it is
27 constitutionally bankrupt.
28

1 **Constitutionally Impermissible**

2 There is an old adage within the Internal Revenue Service; “The burden of
3 proof is upon the taxpayer.” And with this I agree. The problem the IRS faces in
4 this matter, but fails to address, is that the burden of proof to prove that a U.S.
5 citizen IS a “taxpayer” [i.e. a person subject to any internal revenue tax] falls
6 squarely upon the IRS. This is precisely where we stand in the instant matter. The
7 government boldly invoked the broad power of the Secretary to summons the
8 books and records of taxpayers, yet neither possess nor offers to this honorable
9 Court one shred of evidence that I, or my clients (if any), fall within 26 USC
10 §7701(a)(14) – the definition of “taxpayer” or otherwise have an regulatable nexus
11 to the internal revenue laws of the United States.

12 There can be no presumption that a U.S. citizen falls within the reach/power
13 of a federal regulatory scheme absent evidence that would so indicate.

14 Nevertheless, in the instant matter, absent any evidence that would give rise to
15 such a presumption, the government comes before this court operating on the
16 naked allegation that I am embraced by the definition of “taxpayer” at 26 USC
17 §7701(a)(14). Further, absent any evidence that would give rise to such a
18 presumption concerning my clients (if any), the government comes before this
19 honorable Court operating on the naked allegation that my clients (if any) are
20 embraced by the definition of “taxpayer” at 26 USC §7701(a)(14). In short, the
21 government’s entire Petition hinges upon “facts not in evidence” and which the
22 government cannot prove into evidence because the requisite elements are
23 nonexistent.

24 The government contends that it needs the fruits of the Summons to
25 complete its “investigation”, yet at no point in its investigation, or its Petition to
26 this honorable Court, has the government offered one scintilla of evidence that
27 anyone affected by the Summons – such as me or my clients (if any) – is within the
28 constitutional boundaries of the Secretary’s authority under 26 USC §7602. It

1 seems the government is playing a cat-and-mouse game in which it wants to draw
2 much attention to the framing of the house (i.e. the broad powers of the Secretary
3 to summons books and records) without ever addressing whether the foundation
4 (the facts permitting the Secretary to employ those powers) is constitutionally
5 sound.

6 Regrettably, the conduct of the IRS and the Department of Justice in recent
7 years would not remotely support either entity receiving a presumption of
8 constitutional correctness from this honorable Court.

9 **The Evil Tax Defier**

10 As I've been drafting this Motion the Treasury Department launched its
11 latest public relations campaign concerning what it previously referred to as "Tax
12 Protesters". In the newest campaign Treasury has substituted the word "Defier"
13 for the word "Protester". Nevertheless, Treasury's target(s) remains the same.

14 It seems that the government has made quite an effort in its Petition to paint
15 me as a "tax protester". But since I've already submitted ample evidence that
16 Chueng flat-out lied about my views on income tax, it is reasonable to ask whether
17 this characterization by the government is accurate or whether this is yet another
18 lie intended to deceive this honorable Court and falsely establish subject matter
19 jurisdiction where there is none.

20 There are many cockamamie theories floating around our society concerning
21 the income tax [26 USC, subtitle 'A']. The IRS and the courts refer to these as
22 "frivolous". As a layperson I refer to them as "cockamamie" or "nutty". Whether
23 they are referred to as frivolous or nutty, we are essentially speaking of the same
24 arguments. The IRS maintains a long list of such arguments on its website, at
25 <http://www.irs.gov/taxpros/article/0,,id=159853,00.html>.

26 Criminal defense attorney Lowell Becraft has been on a campaign for
27 several years to convince Americans that these frivolous arguments are exactly that
28 – frivolous – and that people should not allow themselves to be lured into believing

1 these arguments or acting upon them. I thoroughly believe in, and support, his
2 message concerning frivolous tax arguments.

3 A few years ago I decided to join Mr. Becraft in his endeavor and started
4 using my radio show as a pulpit from which to send out a very similar message.
5 Over time I have explained to my audience that frivolous arguments are legally
6 meritless and should never be used. A partial list of these frivolous arguments I've
7 addressed on my radio show is; the 861 position; the "Cracking the Code" method
8 of filing returns (promoted by Peter Hendrickson who is now being sued civilly by
9 the U.S. for allegations of unpaid taxes); "expatriation/repatriation"; state citizens
10 don't owe income tax; U.S. citizens don't owe income tax (Chueng's lie
11 notwithstanding); the income tax is only upon 14th Amendment citizens; slavery
12 reparations refunds; the tax code is commercial law and controlled by the UCC;
13 wrong-headed 5th Amendment arguments; etc.

14 I consistently tell my radio audience that if a U.S. citizen is within a class of
15 person upon whom Congress has imposed any tax, or otherwise made him liable,
16 said citizen must file a return and pay the tax as directed by Congress and the
17 Secretary. I have also addressed tangential issues such as the use of trusts. I
18 consistently tell my radio audience that if a person is within a class of person upon
19 whom Congress has imposed any tax, or otherwise made him liable, then creating
20 or utilizing a trust does not alleviate him of his legal obligation to file and pay the
21 tax. (Chueng was aware of these facts long before he committed perjury before
22 this honorable Court because this was communicated to him during our 3 hour
23 meeting.)

24 I'd say – and I have every confidence this honorable Court agrees – that
25 when it comes to frivolous tax arguments I sound far more like an attorney for the
26 U.S. Department of Justice's Tax Division than I do a "tax protestor" or a person
27 promoting abusive tax shelters.
28

1 How many “tax protestors” or people promoting abusive tax shelters tell the
2 American public not to use or rely upon frivolous tax arguments, or use illegal
3 gimmicks to evade the payment of taxes? I’d say the answer is zero! Clearly the
4 government’s representation that I am a tax protester is yet another lie before this
5 honorable Court.

6 Presumptive Language within the Government’s Petition

7 Throughout its Petition, and in Chueng’s declaration, the government
8 continues to use presumptive language for which there are no facts in evidence and
9 for which the government can offer no evidence. I will not belabor the point as
10 this honorable Court is as capable as am I (actually more so) of discerning such
11 language. This language includes, but is not limited to, words/terms such as
12 “taxpayer”, “taxable year”, “taxable income”, “tax evasion”, etc. This is yet a
13 further attempt by the government to use false presumptions for which they have
14 zero evidence in an attempt to establish subject matter jurisdiction for this
15 honorable Court, which they cannot achieve absent lies and unsupportable
16 presumptions and presumptive language that relies on facts not in evidence and for
17 which no evidence exists.

18 True and Compelling Evidence Missing

19 The government asserts that it has been investigating me for some time now
20 – measured in years. On the internet one can easily find hundreds of hours of my
21 radio show, in which I often share my views on taxation. There are many more
22 hours of radio interviews in which I am the guest being interviewed and I am
23 sharing my views on taxation. There is also a substantial amount of my writings
24 on the internet in which I share my views on taxation. And there is even video on
25 the internet of me sharing my views on the subject. In addition to that which is so
26 easily found on the internet, the IRS had me in its offices, testifying under oath, for
27 three (3) hours. **Despite the fact that my own words are so readily available to**
28 **the IRS in the scope of its “investigation” it is telling that the IRS did not**

1 **include one single quote taken from anything I've actually said or written.**

2 There is a very good reason that such a reasonable and rational step was not taken
3 by the government. Because if they had to rely on my own words to substantiate
4 their allegations they'd have absolutely nothing because I've never thought or said
5 the things the government would have this honorable Court believe I think or have
6 said. **In short, the absence of my own words – so readily available to the**
7 **government – is yet another deception (through omission) by the government**
8 **in this matter.**

9 Further, if the government were to let it be known that they are aware of my
10 own words that appear publicly and are so easily found, they would have no
11 defense at all for the gross disrespect they've shown this honorable Court by
12 submitting nothing more than a pack of lies masquerading as Petition for
13 Enforcement of Summons. Additionally, since the government has excluded any
14 and every quote from my own words or writings, it would appear certain that
15 they've listened to them and/or read them and understand the consequences of
16 using them before this honorable Court.

17 This highly suspicious absence of my own words, after years of a so-called
18 "investigation", further validates that the IRS's "investigation" is in reality merely
19 an "outcome based investigation", being driven solely by political considerations
20 and is legally without merit or evidence.

21
22 Further, this highly suspicious absence of my own words, after years of a so-called
23 investigation, further validates (and sheds light on the motive for) Chueng's lies to
24 this honorable Court. Chueng needed to lie about my beliefs and my actions
25 because if the IRS were to use my actual words and deeds in their Petition no
26 elements would exist that could possibly invoke the jurisdiction of this honorable
27 Court.

1 **Constitutionally Impermissible Action**

2 Because the IRS has offered no credible evidence (only naked averments)
3 that I have anything at all to do with the internal revenue laws of the United States,
4 and because the government has no credible evidence (only naked averments) that
5 my clients (if any) have had any federal tax imposed upon them, or have otherwise
6 been made liable for any federal tax, this current attempt by the government to
7 employ the Secretary’s power to summons the books and records of taxpayers,
8 constitutes a Constitutionally impermissible assault on the Right of Free Assembly
9 and the Right of Free Speech and creates an impermissible “chilling affect” on
10 both Constitutionally secured Rights.

11 The First Amendment to the U.S. Constitution states: “Congress shall make
12 no law respecting an establishment of religion, or prohibiting the free exercise
13 thereof; or abridging the freedom of speech, or of the press; or the right of the
14 people peaceably to assemble, and to petition the government for a redress of
15 grievances.” [Underline added]

16 According to Black’s Law Dictionary [6th Ed], under the heading
17 “Assembly, right of”, it states, “Right guaranteed by the First Amendment, U.S.
18 Constitution, allowing people to meet for any purpose connected with
19 government.” My clients (if any) and I would clearly be meeting for “a purpose
20 connected to government”. The underlying cause for the armed insurrection that
21 created this nation was questions about appropriate and legal taxation.

22 This current action brought by the government confirms that the lawful
23 actions of U.S. citizens concerning taxation are kept under the careful scrutiny of
24 the federal government. A citizen making a determination that Congress has, or
25 has not, imposed a tax upon him, or otherwise made him liable for such a tax, is an
26 action “connected to government” for the purposes of the Constitutional
27 prohibition against federal abridgement or interference in the Right of Free
28 Assembly.

1 For a U.S. citizen who has made a determination that Congress has not
2 imposed a tax upon him, or otherwise made him liable for such a tax, to meet with
3 other U.S. citizens who have made the same determination, and to discuss the
4 wisest methods to follow after making such a determination is inarguably action
5 “connected to government” for the purposes of the Constitutional prohibition
6 against federal abridgement or interference in the Right of Free Assembly.
7 Accordingly the government’s actions in this proceeding for Enforcement of
8 Summons is an unconstitutional act that abridges and infringed upon the Right of
9 Free Assembly and if acceded to by this honorable Court, would without a doubt
10 have a “chilling affect” on U.S. citizens meeting together in the future for the
11 purpose stated above.

12 The same issues addressed above are operative concerning the government’s
13 actions by its Petition as it relates to Freedom of Speech. As has been pointed out
14 earlier, the government has no evidence to support its averments that I or any of
15 my clients (if any) have had any tax imposed upon them by or through the internal
16 revenue laws of the United States or have otherwise been made liable for such a
17 tax. To unconstitutionally enforce a summons upon those who the government
18 cannot show the slightest bit of credible evidence have any nexus to the internal
19 revenue laws of the United States, and so to render the names of such private U.S.
20 citizens engaged in nothing more than free speech outside the scope of any
21 regulated or regulatably activity to the most feared agency in the U.S. government
22 would inarguably have a “chilling affect” on such speech by U.S. citizens in the
23 future and is thus an unconstitutional action by the government.

24 I have mentioned earlier that the government’s actions in this proceeding are
25 driven solely by political considerations. Regrettably the government’s primary
26 unspoken goal in this action is to unconstitutionally abridge and infringe on the
27 Right of Free Assembly and the Right of Free Speech and to terrorize U.S. citizens
28 from freely and safely exercising their Right of Free Assembly and Right of Free

1 Speech in the future. The government is attempting to apply this Constitutionally
2 impermissible “chilling affect” to me and my clients (if any). I humbly submit that
3 it is this honorable Court’s constitutional duty to turn aside any attempt by the
4 Executive Branch to abridge, infringe, or create a “chilling affect” on the Right of
5 Free Assembly and/or the Right of Free Speech.

6 Summation

7 I have addressed a myriad of issues in this Motion. I said at the outset that I
8 believe the government has committed fraud upon this honorable Court in its goal
9 to falsely establish jurisdiction where there is none. I believe I have made that case
10 in the strongest possible manner and can only hope that this honorable Court is as
11 appalled at the conduct of this government in this matter as am I.

12 I have demonstrated beyond any reasonable doubt that Revenue Agent
13 Thomas Chueng has knowingly, intentionally, and willfully lied to this honorable
14 Court. Chueng knowingly, intentionally, and willfully lied about my views on tax
15 law. Since all of the government’s averments upon which it bases its claim of
16 jurisdiction are based on Chueng’s declaration and his credibility is now in serious
17 question, that should end any question of jurisdiction in this matter.

18 I have demonstrated beyond a reasonable doubt that the government’s
19 characterization of me as tax protester is completely without merit or credibility.

20 I have demonstrated beyond a reasonable doubt that the government has had
21 every opportunity to include my own words and deeds as found in copious
22 quantities across the internet and from other sources, and that the government has
23 studiously and intentionally stayed away from, and refused to use, my own words
24 and deeds because only the knowing, willful, and intentional lies of Chueng could
25 be used to falsely assert jurisdiction in this matter. The use of my own words and
26 deeds would not support the jurisdiction of this honorable Court and that would
27 undermine the government’s political agenda in this matter.

1 I have demonstrated beyond any reasonable doubt that the government is
2 relying on (in addition to outright lies) false and misleading presumptions for
3 which it possesses not one scintilla of evidence and concerning which it cannot
4 offer this honorable Court one scintilla of evidence in support of its false and
5 misleading presumptions.

6 I have demonstrated beyond any reasonable doubt that the government's
7 actions in this matter, given the totality of the circumstances, constitutes a
8 Constitutionally impermissible abridgement and infringement of the Right of
9 Freedom of Assembly enjoyed by U.S. citizens and would create a "chilling affect"
10 not only against the targeted citizens, but all U.S. citizens similarly situated.

11 I have demonstrated beyond any reasonable doubt that the government's
12 actions in this matter, given the totality of the circumstances, constitutes a
13 Constitutionally impermissible abridgement and infringement of the Right of Free
14 Speech enjoyed by U.S. citizens and would create a "chilling affect" not only
15 against the targeted citizens, but all U.S. citizens similarly situated.

16 Federal Rule of Civil Procedure 12(b)(1) addresses a movant challenging the
17 factual basis for the court's subject matter jurisdiction. That is of course what this
18 Motion is all about. Federal Rule of Civil Procedure 12(b)(1) states that in such a
19 case the allegations in the case are not controlling. The court has wide latitude in
20 addressing the factual basis question. And where there are insufficient facts to
21 establish jurisdiction, the case must be dismissed.

22 In the present matter, as set forth above, the government has failed to set
23 forth the law that it claims subjects me to IRS jurisdiction. What is that law, what
24 is the code section? What are the prongs of any test applied to said law? Does Mr.
25 Cheung's declaration establish that the undersigned meets each of the prongs of
26 that test in virtue of his actions? The absence of quotes taken directly from the
27 undersigned's three-hour, sworn interview with the IRS or from the undersigned's
28

1 website or radio show establish that the government has no facts in support of its
2 petition.

3 Therefore, the undersigned respectfully prays that the court dismiss this
4 action on the basis that the following apply to this party under Federal Rules of
5 Civil Procedure, Rule 12(b): 1) lack of subject-matter jurisdiction; 2) lack of
6 personal jurisdiction; 4) insufficient process, 5) insufficient service of process, and
7 6) failure to state a claim upon which relief can be granted. The dismissal itself is
8 also requested under Rule 12(h)(3) which states that: "If the court determines at
9 any time that it lacks subject matter jurisdiction, the court must dismiss the action."
10

11 I declare under penalty of perjury under the laws of the United States that
12 the foregoing is true and correct to the best of my knowledge.
13
14
15
16

17 _____
18 1031 W. Ave. M14,
19 Suite A
20 Palmdale, CA 93551
21 Dave Champion
22
23
24
25
26
27
28