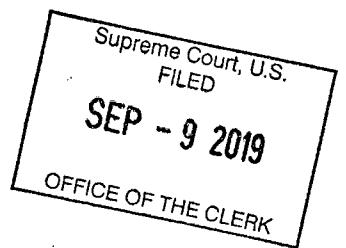


No. 19-334

IN THE
SUPREME COURT OF THE UNITED STATES

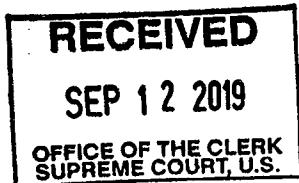


NORMAN DOUGLAS DIAMOND - PETITIONER
v.
UNITED STATES AND UNKNOWN EMPLOYEES
OF THE UNITED STATES - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Despite the US jailing former IRS employees for stolen identity refund fraud, the IRS still refuses to refund the legitimate taxpayer's overpayments. Inconsistent administrative transcripts reveal ongoing corruption of IRS records. Despite statutes designed to make victims whole, the government and courts repeatedly deny jurisdiction. Do US non-resident citizens have any right to recovery of illegally retained tax overpayments, and to compensation for unauthorized collection actions?
2. A US District Court neither filed nor returned documents submitted for filing, and denied receiving a witness's notarized declaration despite its server holding the return receipt for USPS certified mail signed by a court employee. Is dismissal with prejudice a proper method to handle a District Court's destruction of documents?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Diamond v. United States and Unknown Employees of the United States, No. 2:17-CV-06327-ODW (PJW), United States District Court for the Central District of California. Judgment entered February 15, 2018.

Diamond v. United States and Unknown Employees of the United States, No. 18-55376, United States Court of Appeals for the Ninth Circuit. Judgment entered April 23, 2019.

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IRS publication "National Taxpayer Advocate 2011 Annual Report to Congress Executive Summary Preface & Highlights"	13, 25, 26, 24a

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit appears at Appendix A to the petition and is not published in the Federal Register but is published by Google at https://scholar.google.ca/scholar_case?case=7385128673489117700&q=&hl=en&as_sdt=4,114,129¹

The opinion of the United States District Court for the Central District of California appears at Appendix B to the petition and is not published in the Federal Register but is published by Google at https://scholar.google.ca/scholar_case?case=8563847062375973594&q=&hl=en&scisbd=2&as_sdt=4,321¹

JURISDICTION

The date on which the United States Court of Appeals decided petitioner's case was April 23, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on July, 18 2019, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 USC section 1254(1).

¹ Diamond did not request nor contact Google regarding these publications.

**CONSTITUTIONAL PROVISIONS, TREATIES,
STATUTES, ORDINANCES, AND REGULATIONS
INVOLVED**

Fifth Amendment to the US Constitution:

...; nor shall any person be ...; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ...

United States - ... Income Tax Convention:

... Exchange of Information ...
... Assistance in Collection ...

28 USC section 610. Courts defined:

As used in this chapter the word "courts" includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade.

28 USC section 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

28 USC section 1346. United States as defendant:

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or

collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(b) (1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 USC section 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

- (1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;
- (2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of

Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

28 USC section 1491. Claims against United States generally; ...:

(a)

(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 USC section 1500. Pendency of claims in other courts:

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States ...

28 USC section 1631. Transfer to cure want of jurisdiction:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court

shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

26 USC section 1462. Withheld tax as credit to recipient of income:

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

26 USC section 3406. Backup withholding:

(b) REPORTABLE PAYMENT, ETC. For purposes of this section -

(1) REPORTABLE PAYMENT The term "reportable payment" means -

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

26 USC section 6103. Confidentiality and disclosure of returns and return information:

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

(1) Department of the Treasury

Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax

administration purposes.

(2) Department of Justice

In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) ...

(4) Disclosure in judicial and administrative tax proceedings

A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only -

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title; ...

26 USC section 6201. Assessment authority:

(a) Authority of Secretary

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

26 USC section 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. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

26 USC section 6213. Restrictions applicable to deficiencies; petition to Tax Court:

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency.... Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404 (b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

26 USC section 6401. Amounts treated as Overpayments:

(b) Excessive credits

(1) In general

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, G, H, I, and J of such part IV), the amount of such excess shall be considered an overpayment.

(c) Rule where no tax liability

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

26 USC section 7433. Civil damages for certain unauthorized collection actions:

(a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards

any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

26 USC section 7701. Definitions:

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to

- (A) jurisdiction of courts, or
- (B) enforcement of summons.

(50) Termination of United States citizenship

(A) In general

An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(g)(4).

26 USC section 7805. Rules and regulations:

(a) AUTHORIZATION

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

26 CFR 601.101. Introduction:

(a) General. The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business

abroad, ...

Internal Revenue Manual - 4.8.9.3 Criteria for
Issuance

4.8.9.3 (07-09-2013)

Criteria for Issuance

1. A notice of deficiency must be issued when there
is a proposed tax deficiency with which the
taxpayer does not agree and: ...

C. The taxpayer requests the issuance of the notice
in order to petition the case to the Tax Court.

IRS Tax Topic 307:

Topic 307 - Backup Withholding

Payments subject to backup withholding: Backup
withholding can apply to most kinds of payments
reported on Form 1099, including:

... Payments by brokers and barter exchange
transactions (Form 1099-B (PDF)); ...

Credit for backup withholding: If you had income
tax withheld under the backup withholding rule,
report the federal income tax withholding (shown
on Form 1099) on your return for the year you
received the income.

STATEMENT OF THE CASE

On recovery of illegally retained overpayments, though Diamond mistakenly inferred that US District Court for the Central District of California would have jurisdiction under 28 USC section 1346(a)(1), and further mistakenly inferred that US District Court for the District of Columbia District would have jurisdiction under 28 USC section 1346(a)(1) and 26 USC section 7701 definition (39), in fact US Court of Federal Claims has jurisdiction under 28 USC section 1346(a)(1) and 28 USC section 1491(a)(1). Though 28 USC section 1402(a)(1) denies jurisdiction to all US district courts, 28 USC sections 1631 and 610 mandate transfer to US Court of Federal Claims because that court has jurisdiction under 28 USC sections 1346(a)(1) and 1491(a)(1).

On unauthorized collection actions, US District Court for the Central District of California and all US district courts have jurisdiction under 26 USC section 7433. Were IRS malfeasance to be considered tort, US District Court for the District of Columbia District would acquire jurisdiction under 28 USC sections 1346(b) and 1402(b) and 26 CFR 601.101, but this alternative is moot because no one disputed the IRS's ruling that IRS actions were collection actions, appendix K.

US Court of Appeals for the Ninth Circuit had jurisdiction under 28 USC section 1291 on the ruling from the Central District of California.

Petitioner Diamond was a US citizen for all tax years in dispute, but did not reside, work, nor operate a business in the US. No one disputed that 26 USC section 7701 definition (50) treats Diamond as a US citizen. Beginning 1999 and including all tax years in dispute, Diamond's non-resident alien spouse Zaida

Goleña Del Rosario was treated as a US resident for tax purposes, falling under US jurisdiction but not exclusively so. Del Rosario did not reside, work, nor operate a business in the US.

Diamond resided in Canada until 1987, in Japan until 2019, and now in Canada. From 1976 to 2001 Diamond's accounts at Canadian stockbrokers were subject to US withholding at rates set by treaty. When the US introduced the Qualified Intermediary system in 2002, Diamond's accounts became subject to backup withholding under 26 USC section 3406 because Diamond relied on a letter from the Social Security Administration in 1994 that Diamond was eligible for a replacement social security number after malfeasance by IRS and postal employees publicly exposed Diamond's original SSN.

When stockbrokers reported US withholdings solely on Canada's Form T-5 or mistakenly on US Form 1042-S, the IRS refunded overpayments to Diamond without dispute. But when stockbrokers reported backup withholding on US Form 1099, the IRS seized overpayments and accused Diamond of frivolousness and fraud. For many years the IRS refused to state what positions it held frivolous or fraudulent. In 2012 there were news articles about the jailing of IRS employee Monica Hernandez for embezzlement, and in 2013 Diamond found details in a government posting, appendix D. Hernandez altered reports of withholding on Forms 1099-B to credit herself instead of legitimate beneficiaries. The government report states that Form 1099 reports withholding from interest and dividends, but the fact is that Form 1099-B reports withholding in the amount of 30% of gross proceeds of sales of shares under 26 USC section 3406(b)(1)(B), which can be thousands of times greater than capital gain income

let alone interest or dividends, yielding large profits to those who can cover up embezzlement. The IRS knows; it cites Form 1099-B in its Tax Topic 307.

Cook v. Tait, 265 US 47 (1924) is the basis for the US to tax non-resident citizens² and their spouses, but it does not compel other countries to copy all details of US practices in employment, social programs, and taxes. US tax returns for non-resident citizens have been likened to forcing square pegs into round holes. Diamond made his best efforts. Diamond wrote and signed honest jurats under penalty of perjury, detailing problems that he could not solve and his efforts to deal with them. When stockbrokers reported US withholdings solely on Form T-5 or 1042-S, from 1976 to 2001, and again for 2003 and 2004 when Diamond reported the IRS's accusation of frivolousness for 2002, the IRS refunded overpayments to Diamond without dispute. The IRS waited until 2010 before stating that honest declarations were a reason for holding returns to be frivolous. Diamond complied, unwillingly committing perjury on all refiled and newly filed returns, and the IRS accepted all perjured returns but seized refunds owing. The IRS's Taxpayer Advocate reported to Congress the reason why Diamond and thousands of other honest taxpayers are no longer US citizens, appendix L. However, on reading about IRS employee Monica Hernandez, it no longer appears that honesty was a reason for accusations of frivolousness.

In *Diamond et al. v. US*, 107 Fed. Cl. 702 (2012), *aff'd Diamond et al. v. US*, Fed. Cir. No. 2013-5036, Dkt. 29-2 (Fed. Cir. 2013), *cert. denied*, the Federal

² "In other words, the principle was declared that the government, by its very nature, benefits the citizen and his property wherever found and, therefore, has the power to make the benefit complete."

Circuit ruled that Court of Federal Claims lacked jurisdiction for 2005, by overturning the IRS's acceptance of the refiled 2005 return of Diamond and Del Rosario because Diamond honestly reported the status of Del Rosario's SSN (applied for in 1994, never granted nor rejected) and ITIN (applied for and rejected 4 times) instead of reporting a number for her, and because (due to a tax treaty) Del Rosario depended on Fifth Amendment rights upheld by *US v. Sullivan*, 274 U.S. 259, 263-64 (1927) and *Garner v. US*, 424 U.S. 648, 661-63 (1976).^{3,4} However, in *Diamond et al. v. US*, 115 Fed. Cl. 516 (2014), *aff'd* *Diamond v. United States*, Fed. Cir. No. 2014-5088, (Fed. Cir. 2015), *cert. denied*, the Federal Circuit ruled that Court of Federal Claims possessed jurisdiction for 2007, by upholding the IRS's acceptance of the refiled 2007 return of Diamond and Del Rosario, even though Diamond honestly reported the status of Del Rosario's SSN and ITIN applications and Del Rosario's dependence on Fifth Amendment rights identical to the 2005 return. As one judge was on both panels of this intra-circuit split, it is actually an intra-judge split.

The Assistant Attorney General for Taxation joined in too. Kathryn Keneally reported to Congress, appendix E, "the IRS will make good on any refund that is due to the taxpayer" while at the same time she and subordinates prevented courts from letting the IRS make good.

In 2014 Diamond complied with the Federal

³ Under 28 USC section 1500, Court of Federal Claims should have lacked jurisdiction on these issues as they had already been argued in Tax Court; see appendix J.

⁴ The IRS continued to maintain that it accepted the refiled 2005 return despite the Federal Circuit ruling, and sometimes stated that it should have paid the refund owing.

Circuit, submitting an amended joint return for 2005 on Form 1040X, fabricating a social security number for Del Rosario and writing documents to support Forms 2555 in Diamond's name while preserving Del Rosario's Fifth Amendment rights. SSN fabrication used to be illegal, *see US v. Silva-Chavez*, 888 F.2d 1481 (5th Cir. 1989), but the Federeal Circuit made it mandatory. Again the IRS accepted the refiled return but seized the refund.

Diamond learned he needs a jury, so if the DOJ again want to overturn the IRS's acceptance of refiled 2005 returns but uphold the IRS's acceptance of refiled 2007 returns, the DOJ can explain its positions to a jury instead of judges. Diamond filed suit in US District Court for the Central District of California.

However, the ruling in *Cook v. Tait* is obsolete. The Ninth Circuit correctly observed that Congress, by enacting 28 USC section 1402, denies jury trials to US non-resident citizens. When the citizen and his property are found outside the US, the government no longer makes the benefit complete. The Ninth Circuit correctly denied transfer to US District Court for the District of Columbia District because 26 USC section 7701 definition (39) only applies to actions brought under Title 26, not Title 28. US Court of Federal Claims should be the only venue with jurisdiction over US non-resident citizens.

In the present case, US District Court for the Central District of California and US Court of Appeals for the Ninth Circuit went further by disregarding the statute 28 USC section 1631. This section and its reference to 28 USC section 610 compel the District Court to transfer the refund action to Court of Federal Claims. Without a jury, perhaps the Federal Circuit will make another

intra-panel split between tax years 2005 and 2007⁵, but the Ninth Circuit did not even give a reason for denying this transfer.

In *Diamond v. CIR*, US Tax Court No. 14482-10SL (USTC 2013), Tax Court lacked jurisdiction to order a refund because of *Greene-Thapedi v. CIR*, 126 TC 1 (USTC 2006). The IRS proved it is correct to penalize writers of honest declarations because they impede administration of US taxes, while preventing consideration of overpayments which exceeded the penalty. In *Diamond et al. v. CIR*, US Tax Court No. 5516-12SL (USTC 2013), the IRS conceded 100% of alleged penalties but again prevented consideration of overpayments. In *Diamond v. CIR*, US Tax Court No. 5518-12SL (USTC 2012), the IRS admitted that it had not assessed any penalty, but later the IRS illegally transferred the credit for 2007 to 2002 and then erased records of the credit. Again no court accepted jurisdiction on refunds owing.

The IRS told Diamond telephonically that the IRS made an administrative record of alleged mathematical or clerical error for 2005 but refused to issue Diamond a record thereof. 26 USC section 6213(b)(2) compels the IRS to abate on demand but the IRS refused. The IRS further refused to comply with deficiency procedures mandated by the same section. Internal Revenue Manual section 4.8.9.3(1)(C), by authority of 26 USC section 7805, compels the IRS to issue a Notice of Deficiency on demand by the taxpayer but again the IRS refused. If the IRS produces an invalid Notice of Deficiency then US Tax Court lacks jurisdiction and the IRS must make a refund, *see Trefry v. CIR*, 10 BTA 134 (BTA

⁵ Though no one has disputed the IRS's acceptance of the Form 1040X amended return for 2005.

1928) and *Shelton v. CIR*, 63 T.C. 193 (USTC 1974); but if the IRS destroys or conceals the invalid notice then Tax Court lacks jurisdiction and the IRS keeps the illegally collected overpayment, see *Diamond v. CIR*, US Tax Court No. 4029-17 (USTC 2017), *aff'd Diamond v. Commissioner of Internal Revenue Service*, US Court of Appeals for the D.C. Circuit No. 17-1169 (D.C. Cir. 2018), *cert. denied*.

Any justification for the IRS to collect more tax than declared must depend on assessment under 26 USC section 6203; *see US v. Kelley*, 539 F.2d 1199 (9th Cir. 1976), *cert. denied*. The IRS ignored Diamond's demands for copies of assessments.

After Diamond initiated refund suits in Court of Federal Claims, the IRS belatedly credited Diamond's overpayments for 2006, 2007, and 2008, but not the vastly larger payment for 2005. However, the IRS seized and illegally handled overpayments for 2006 and 2007, though possibly legally for 2008.

The courts in this case also dismissed the possibility of a *Bivens* case, despite the Fifth Amendment prohibiting deprivation of property without due process (except of course for the correct amount of tax legally authorized under the Sixteenth Amendment).

In 2013, Ameritrade informed Diamond that he could subpoena a representative of Ameritrade to testify on the accuracy of Forms 1099 and 1042-S by service on Corporation Service Co., but testimony is impossible when every court denies jurisdiction.

Unless certiorari is granted, the ruling in *Cook V. Tait* stands entirely demolished, as no court can order refund of overpayments by a US non-resident citizen.

Upon learning about Monica Hernandez, Diamond first filed a Federal Tort Claim and sued in *Diamond v. US*, No. CV 13-8042-GHK (AGR) (CD

California 2015), *aff'd Diamond v. US*, No. 15-55334 (9th Cir. 2017). Fraud violates statutes of both California and the District of Columbia. However, Diamond subsequently learned about 26 USC section 7433 and came into agreement with the IRS's ruling that the IRS's actions pertained to collection of taxes. Diamond submitted an administrative claim for unauthorized collection actions and sued in *Diamond v. US*, No. CV 14-9196-GHK (AGR) (CD California 2015), *aff'd Diamond v. US*, No. 15-56100 (9th Cir. 2017). The courts ruled that Diamond's causes of action relied on conjectures, and dismissed for lack of jurisdiction to prevent Diamond from undertaking discovery to determine a preponderance of the evidence.

In the present case, no conjecture is involved. The IRS's failures to make credits mandated by 26 USC sections 1462 and 6401, failures to contact payers mandated by 26 USC section 6201(d), illegal transfers of credits and erasures of credits, and failures to provide copies of assessments mandated by 26 USC section 6203 are proven. The IRS's refusals to issue mandatory statutory notices are proven. The IRS's repeated corrupt alterations to administrative records are proven, for example where one transcript shows timely filing of an original return but months later the return no longer being on file, but where a different transcript deletes records of the timely filing and subsequent unfiling. Courts have tendencies to rely on Form 4340 transcripts, but the IRS's transcripts show that Form 4340 is more egregiously corrupt than other forms. The IRS's purging of files for 2005 while litigation for that tax year was ongoing is proven.

In the present case, Diamond first submitted an administrative claim for unauthorized collection

actions and next submitted a Federal Tort Claim. The IRS denied the tort claim because its actions pertained to collection of tax. No one disputed the IRS's ruling that its actions pertained to collection of tax. No one even disputed that the IRS's actions were unauthorized. The DOJ alleged that the IRS did not file a lien against Diamond, and Diamond does not know if it is true or not, but the IRS stated in *Diamond v. CIR*, US Tax Court No. 14482-10SL (USTC 2013) (non-reviewable) and *Diamond et al. v. CIR*, US Tax Court No. 5516-12SL (USTC 2013) that the IRS did file liens against Diamond.

26 USC section 7433 grants jurisdiction to all US district courts on unauthorized collection actions. Though 26 USC section 7701 definition (39) further grants jurisdiction as if the non-resident citizen were a resident of the District of Columbia, it does not constrain the choice of venue. 28 USC section 1402(a) does not constrain the venue of an action brought under title 26 USC. Had anyone disputed the IRS's ruling that its actions pertained to collection of tax, then hypothetically 28 USC section 1402(b) would constrain the venue of a tort case whereupon 28 USC section 1631 together with 26 CFR 601.101 would compel a transfer to US District Court for the District of Columbia District (as the Director, Foreign Operations District, whose actions and omissions would then be torts, had his last known address in the District of Columbia where the IRS signed for Diamond's registered letter); but this is moot because no one disputed the IRS's ruling that its actions pertained to collection. No statute deprives US District Court for the Central District of California of the jurisdiction that 26 USC section 7433 confers. The courts in this case gave no reason at all for dismissing the cause of action brought under section 7433.

Again, unless certiorari is granted, the ruling in *Cook V. Tait* stands entirely demolished, as courts deny US non-resident citizens the rights provided by 26 USC section 7433.

On the District Court's destruction of documents, courts properly observed that public disclosure of social security numbers is *res judicata* but ignored the matter of the court destroying documents.

In *Diamond v. CIR*, US Tax Court No. 14482-10SL (USTC 2013), the IRS disclosed Diamond's social security number to the public by filing an unredacted exhibit. In *Diamond et al. v. US*, 107 Fed. Cl. 702 (2012), the DOJ disclosed Diamond's social security number to the public by filing an unredacted exhibit in an action that the DOJ described as intentional. Ronald Guilmette is Diamond's friend but not authorized to obtain Diamond's social security number. Without any special privileges he obtained a certified copy of the IRS's exhibit and a PACER download of the DOJ's exhibit, signed a declaration in front of a public notary in California, appendix F, and sent the notarized declaration to Diamond's sister Deborah Strom in California. When Guilmette requested a certified copy of the DOJ's brief, the Court of Federal Claims encashed Guilmette's payment for the entire document, but subsequently sealed the DOJ's exhibit and refunded Guilmette's payment. Court of Federal Claims wrote a letter to Diamond explaining that Federal Claims disagrees with the position of the DOJ and 9th Circuit that social security numbers are supposed to be disclosed to the public in court filings, appendix G.

In preparation for *Diamond v. US*, No. CV 13-8042-GHK (AGR) (CD California 2015), the Pro Se Clinic at the District Court advised Diamond and

server Deborah Strom that Strom should serve copies of Guilmette's notarized declaration on the US and its agencies by certified mail with return receipts and next serve originals and conformed copies of proof of service with Guilmette's notarized declaration with copies of the aforementioned return receipts and a stamped self-addressed envelope on the District Court again by certified mail with return receipt. Diamond asked why a return receipt was needed for service on the District Court and the Pro Se Clinic answered that sometimes the District Court mishandles documents. The Pro Se Clinic was right. Even though the certified mail return receipt signed by District Court employee J. Lopez was returned to Strom, appendix I, and the USPS web site showed that certified mail number 7012 3460 0000 9387 8442 was delivered, in *Diamond v. US*, No. CV 13-8042-GHK (AGR) (CD California 2015), *aff'd* *Diamond v. US*, No. 15-55334 (9th Cir. 2017), the District Court ruled that the court had not received the document, appendix H.

Although the court destroyed the original notarized declaration (likely replaceable though next time Guilmette will be a hostile witness), Diamond has a PDF copy scanned by Strom. When the District Court did not return to Strom a "Filed" stamped copy of Strom's filing, Diamond wrote a brief attaching copies of Guilmette's notarized declaration and the Court of Federal Claims' letter as exhibits. Diamond mailed that brief together with briefs on other topics and one Certificate of Service listing all the documents being served at that time. The District Court filed all except that one brief. The District Court filed the Certificate of Service listing all of the briefs Diamond served, and filed the EMS (express mail) shipping label showing the weight of the

package written by Japan Post's employee. Diamond pointed out that it is simple to weigh the documents that the District Court filed, weigh the envelope in which they were shipped, and observe that the shortfall is the weight of the missing brief.

In the present case, the courts dismissed Diamond's report of the District Court's malfeasance. The courts correctly observed that they had already ruled on merits, in *Diamond v. US*, No. CV 13-8042-GHK (AGR) (CD California 2015), *aff'd* *Diamond v. US*, No. 15-55334 (9th Cir. 2017), that 26 USC section 6103(h)(4)(A) authorizes public disclosure of social security numbers when a return is litigated. However, the courts ignored the fact that Diamond's complaint was not about the public disclosure of SSN, but about the District Court's malfeasance in destroying Guilmette's notarized declaration and Diamond's brief that called attention to the declaration. One must wonder why the District Court destroyed those documents instead of filing them, since the statutory authorization to disclose SSNs publicly means the IRS and DOJ had nothing to be embarrassed about.

Diamond here asks if dismissal with prejudice is a proper a proper method to handle a District Court's destruction of documents.

REASONS FOR GRANTING THE WRIT

"But taxes are the life-blood of government", *Bull v. US*, 295 US 247 (1935). Taxes are not supposed to be the life-blood of embezzlers. However, criminals have figured out every step of the process: alter records of information returns from payers to transfer withheld funds to thieves, fabricate a record of an alleged mathematical or clerical error but prevent statutory notices of mathematical or clerical errors from being issued to rightful beneficiaries, alter records of tax returns to erase claims for withholding and forge fabricated baseless claims for foreign tax credits, mark the altered records of returns as frivolous and fraudulent, refuse to contact payers and withholding agents, arrange that even if an honest IRS employee encounters the records she or he will provide no assistance on the presumption the filer is a tax protester, add to the list of frivolous positions an "obviously false" claim for withholding that is factually true because withholding (30% of gross sales proceeds) often far exceeds actual income (capital gain), and create records of "no return on file" to further mislead appeals officers. Criminals figured out to allege fraud and frivolousness, erase records of both the filing and subsequent unfiling of original returns, and refuse to issue mandatory statutory notices in order to prevent courts from reviewing where the withheld money went.

A few identity thieves in the IRS were finally caught and jailed, but they are bit players. The ring leaders have not been caught. Even when TIGTA reported the jailing of Monica Hernandez for embezzling from Form 1099-B, TIGTA described Form 1099 as reporting withholding from interest and dividends instead of describing the actual kind of

withholding, 30% of gross proceeds from sales of shares, that is actually reported on Form 1099-B. However, the ring leaders don't appear to be in TIGTA either.

The DOJ persuaded courts that a filer is frivolous in honestly declaring the status of a social security number (applied for, neither granted nor rejected) and Individual Taxpayer Identification Number (rejected) even though the IRS itself stamped "ITIN Rejected" on a return. The DOJ persuaded courts that a filer is frivolous in complying with US Supreme Court rulings that upheld the Fifth Amendment privilege as to the source of income. Tax Court and the IRS accepted sealed testimony, protected the related documents, and confirmed that income was properly reported, but the DOJ persuaded other courts not to accept the same. The Assistant Attorney General for Taxation told Congress that the IRS will always make good to victims of stolen identity refund fraud while at the same time she persuaded courts not to make good to victims of fraudulent IRS employees. The DOJ persuaded courts to overturn the IRS's acceptance of a return. One might wonder why the DOJ vigorously opposes court review of where the withheld money went. There have been news reports of criminal organizations infiltrating FBI offices. Perhaps the DOJ's Tax Division is infiltrated too.

Finally, one must wonder why courts themselves refuse to review where the withheld money went.

Bull v. US, Id.:

"In recognition of the fact that erroneous determinations and assessments will inevitably occur, the statutes, in a spirit of fairness, invariably afford the taxpayer an opportunity at some stage to have mistakes rectified. ... If that which the sovereign retains

was unjustly taken in violation of its own statute, the withholding is wrongful. Restitution is owed the taxpayer. ... The United States, we have held, cannot, as against the claim of an innocent party, hold his money which has gone into its treasury by means of the fraud of its agent. *United States v. State Bank*, 96 U.S. 30."

Congress also knew that fraudulent agents operate in the government. Congress enacted laws guaranteeing the right to pay the correct amount of tax, and 26 USC section 7433.

The Supreme Court, Congress, the IRS, TIGTA, and even DOJ know that it is not in your country's interest to let tax money be the life-blood of thieves, nor to deny making whole to the victims, though some courts and agencies ignore their mandate when they have inside operators to protect.

The roles of plaintiff and defendant are reversed in tax cases, but victims must be allowed to due process.

A Constitutional problem arises when courts' dismissals leave overpayments in the hands of corrupt collectors. The Fifth Amendment expressly prohibits deprivation of property without due process (except of course the legally authorized amount of tax allowed by the Sixteenth Amendment).

Another Constitutional problem arises when some circuits limit evidence to the administrative record at the time of a Collection Due Process Hearing. As the IRS does not reveal its record until after the CDP Hearing (and continues altering its record after that), the victim is denied notice and opportunity.

The IRS's "National Taxpayer Advocate 2011 Annual Report to Congress Executive Summary

Preface & Highlights" describes thousands of renunciations of US citizenship by honest taxpayers who have no other solution, appendix L. Most non-resident citizens cannot afford expense or time to fight; it is better just to renounce. Petitioner cannot afford this fight either, with his salary dropping to \$7,500 this year and soon to zero, Japanese social security \$7,200 per year, dividends \$9,300 per year, and legal expenses (including the cost of printing petitions) coming from savings that were supposed to be used for retirement. Diamond wishes he had known to renounce earlier.

The US president, secretary of state, and Congress condemned Russia's abuses of wealthy Russians Mikhail Khodorkovsky and Sergei Magnitsky. America's abuses of low income Americans should be even more repugnant. The poor are more numerous. Neither the Russian nor American republics will fall as a result of the ways their governments abuse their citizens, but all pretences of rule of law and due process and human rights have fallen away.

When the IRS can violate court orders; when the IRS, DOJ, and lower courts can violate Supreme Court rulings; when courts impose further penalties on victims who call attention to illegal actions; when courts make up purported facts which even the IRS doesn't believe; when courts misquote laws to serve their biases; and when courts destroy evidence; there can only be despair at the state of the US court system. One can only wonder what kind of courts impose penalties on honesty but accept and compel perjury.

US courts misrepresent laws, misrepresent facts, cannot keep their lies straight from one case to another, and sometimes cannot keep their lies

straight within a single case. US courts designate rulings as unpublished and non-precedential to hide their misrepresentations of laws, misrepresentations of facts, misrepresentations of precedents, and protection of corrupt collectors and ring leaders who have not been caught. They need to be directed to do their job properly. Congress enacted the Bill of Rights and legislation to protect victims from corrupt actors in all branches of the US government.

The overturn of *Cook v. Tait*, 265 US 47 (1924), harms Diamond by denying a jury trial, but it benefits nine million non-residents of the US who still hold US citizenship. For the greater good, Diamond does not seek review of the part of the Ninth Circuit's ruling observing that Congress, by enacting 28 USC section 1402(a), overturned the Supreme Court's ruling in *Cook v. Tait*. However, as the Supreme Court considered *Cook v. Tait* to be a case of national interest, Diamond will not object if the US seeks review of this part of the Ninth Circuit's ruling.

CONCLUSION

The thieves and their accomplices have succeeded in injuring Diamond to the point where even the sought compensation cannot return him to a normal life. But for the good of your country, the Court should consider what kind of country you wish to be in charge of. The writ should be granted.

NOTIFICATION CONCERNING MAIL

It is beyond petitioner's control when the court mails a document by means normally calculated to take thirteen (13) days for delivery, or when the court mails a document without proper postage. Concurrent service by e-mail can alleviate delays.

Respectfully submitted,

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