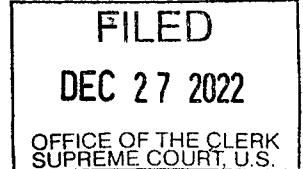


No.: 22 - 6456



SUPREME COURT OF THE UNITED STATES

PAUL WELDON

Petitioner

VS.

UNITED STATES OF AMERICA

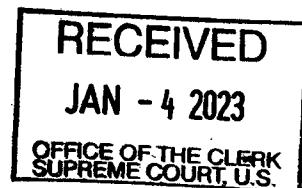
Respondent

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit (Appeal No. 21-15311)**

PETITION FOR A WRIT OF CERTIORARI

PAUL WELDON
(PETITIONER *PRO
SE*)

P.O. Box 9094 Fresno,
CA 93790.



1. QUESTION PRESENTED

Observing that an "assessment is expected to be rational, not flawless.

Caulfield v. Comm'r, 33 F.3d 991, 993 (8th Cir. 1994).

Material Issue Existing and entering summary judgment is not appropriate when there is evidence of a violation of procedural due process and the petitioner's 14th Amendment rights in the tax collection and assessments of taxes by the United States. The IRS relied on third-party filings that failed to identify Mr. Paul as having worked for them and the third-party information was not self-authenticating documents. And whether the US district court lacks jurisdiction to entertain the United States' current action to reduce assessments to judgment against Petitioner due to the fact that there was no authorization signed by the Attorney General under U.S. Code § 7401 and U.S. Code § 7402 (a).

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PETITION FOR WRIT OF CERTIORARI

PAUL WELDON, respectfully petitions the Supreme court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision by the United States Court of Appeals for the Ninth Circuit denying Mr. Paul Weldon's direct appeal was entered on June 29, 2022. Weldon's Petition for Panel Rehearing in the United States Court of Appeals for the Ninth Circuit was denied on 09/29/2022. Those orders are attached at Appendix ("App.") at 1.

JURISDICTION

Mr. Paul Weldon's Petition for Panel Rehearing in the United States Court of Appeals for the Ninth Circuit was denied on 09/29/2022. On 10/06/2022 90 USCA MANDATE as to 74 Notice of Appeal filed by Paul D Weldon was issued. The judgment of Appeal Court, entered June 29, 2022, takes effect from the date the Appeal court mandate was entered 10/07/2022.

Mr. Paul invokes this Court's jurisdiction under 28 U.S.C. §

1257, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Ninth Circuit Order denying the rehearing.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The United States filed this action on September 25, 2018, allegedly reducing federal tax assessments for 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2012, and 2013 tax years against Petitioner, Paul Weldon to obtain judgment and foreclose

federal tax liens on residential property owned by Weldon in Fresno, California, pursuant to 26 U.S.C. 7401, 7403.

On both counts, the United States filed a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

It appears the letter authorizing the United States under U.S. Code § 7401 and U.S. Code 7402(a) to file the substantive action against the petitioner was not signed by the Attorney General, which suggests the Complaint is procedurally defective and the District Court lacks jurisdiction.

United States' complaint was based on information from the California Department of Health, Community Hospitals of Central California, Blue Cross of California, and Beverly Enterprises, for which United States claimed Petitioner worked for his medical transportation services for the above third-party companies. The petitioner never admitted that he billed and received payments from third parties. Voucher(s)" from the tax returns that Appellant filed in 2015, which should have created a new "assessment date," differ largely from the "assessment

date(s)" found in the complaint, which would also change interest and penalties as well.

When these tax refunds were sent to Petitioner, in fact, he had his words typed on the back of three money orders in early 2017 that he had negotiated, paying a total of \$513 to eliminate all of his federal tax liabilities. The US offered a negotiating instrument, which was "accepted" as payment. Through tacit acquiescence with appellant Mr. Weldon, the United States entered into a legally binding contractual relationship; there was no fraud in the factum; and the United States' tacit acquiescence to the terms of the Negotiable Instrument created an estoppel to this proceeding, which the District Court ignored.

On January 25, 2021, the District Court below entered a Memorandum of Decision granting the summary judgment in favor of the United States on all two counts. According to the Judgment, Petitioner, Paul was found to be indebted to the United States in the amount of \$767,041.19 for unpaid individual federal income tax, interest, and penalties for tax years 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2012, and 2013, less any additional credits according to proof, plus interest pursuant

to 26 U.S.C. §§ 6621 & 6622 and 28 U.S.C. § 1961(c)(1) and other statutory additions, as provided by law, from August 31, 2020, until the date of payment. The Court also held that the federal tax liens arising from the assessments set forth in paragraph 17 of the First Amended Complaint (Doc. No. 40) were found to be valid and attach to all property and rights to property of Paul D. Weldon, both real and personal, tangible and intangible, including his interest in real property located at 6519 West Olive Avenue, Fresno, California.

REASON FOR THE WRIT OF CERTIORARI

This case is a superior vehicle for resolving a circuit conflict on a well-defined legal issue of exceptional importance to the national economy.

This case is a superior vehicle for addressing the question presented because it is brought against an agency charged by Congress with challenging unfair methods of tax assessment, and it comes to the Court in the straightforward posture of a final

judgment following the granting of the United States' complaint for summary judgment

A. MATERIAL ISSUES FOR DETERMINATION EXIST WHEN THERE IS EVIDENCE OF PROCEDURAL DUE PROCESS VIOLATIONS IN TAX COLLECTION AND ASSESSMENT, THE ENTRY OF A SUMMARY JUDGMENT IS NOT APPROPRIATE.

I. The tax collection and assessment procedures of the Respondent do not afford Mr. Paul either pre-deprivation or prompt post-deprivation "probable cause" hearings.

Procedural due process specifies what characteristics a proceeding must have when the government, or a private party acting under color of law, seeks to deprive an individual of his life, liberty, or property. *Goldberg v. Kelly*, 397 U.S. 254 (1970). "Due process of law" has the same meaning in both the fifth and fourteenth amendments, *Hurtado v. California*, 110 U.S. 516, 535 (1884), so the procedural due process requirements established by the Supreme Court should apply equally to state and federal governmental actions. What due process requires is often said to be simply "decency and fairness." *Breithaupt v. Abram*, 352 U.S. 432, 436 (1957).

The taxpayer in a federal jeopardy tax collection (an immediate seizure of assets through a lien when the government believes the collection of the tax would be "jeopardized" by delay) should be afforded an opportunity for a probable cause determination in a prompt postdeprivation hearing if he can prove that he will be irreparably damaged by the seizure.

Commissioner v. Shapiro 424 U.S. 614 (1976).

Generally, a presumption of correctness attaches to notices of deficiency in the Tax Court. See *Palmer v. United States Internal Revenue Serv.*, 116 F.3d 1309, 1312 (9th Cir.1997).

Delaney v. Commissioner, 743 F.2d 670, 671 (9th Cir.1984).

For the presumption to apply, however, the Commissioner must base the deficiency on some substantive evidence that the taxpayer received unreported income.

United States v. Janis, 428 U.S. 433, 442, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976) (holding that the presumption does not apply when the IRS makes a naked assessment without foundation).

Here, issuance of a writ of certiorari to review the judgment of the Court of Appeals is necessary on the ground that the IRS makes a naked assessment of the petitioner's tax assessments or liability for 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2012, and 2013 without foundation, and the presumption of correctness attached to notices of deficiency in the tax assessments is defeated here due to a procedural due process violation. In fact, the relationship of a taxpayer to the government is analogous to the relationship of a debtor to his creditor, and the taxpayer faces a similar risk of irreparable harm due to a wrongful deprivation of his property.

Here, the United States wrongly asserts that it was entitled to summary judgment as a matter of law against Weldon for the purported liabilities for tax years 2005 through 2008, 2010, 2012, and 2013, based on Weldon's returns.

As a matter of law, the assessments for those years are fundamentally flawed because the IRS inaccurately or over-calculated Weldon's tax liabilities for the 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2012, and 2013 tax years based on the filings by third-party companies, which Petitioner

Weldon never confirmed to the United States if he did any business with the alleged companies.

The lower court relied on the revenue officer's declaration without investigating whether the petitioner does business with third parties, depriving the petitioner of fairness. The said declaration does not lay a proper foundation, fails to identify the records he is referring to, where and when the records were created, and by whom, and fails to provide enough factual information to establish that there are any such records in existence.

Ordinarily, returns submitted by taxpayers are processed by the revenue body applying either assessment or self-assessment principles, generally with limited checking, and a formal assessment notice is issued to the taxpayer along with details of any further amounts payable or refundable, after taking account of taxes already paid. The information reported by third parties (e.g., employers and financial institutions) under the law was only processed for matching with tax records to detect cases of inaccurate returns or return non-filing.

A writ of certiorari to quash the decision of the US appeals court is necessitated here because the petitioner never admitted that he billed and received payments from third parties such as the California Department of Health, Community Hospitals of Central California, Blue Cross of California, and Beverly Enterprises for his medical transportation services. Neither was there any due process to determine if Petitioner Paul was an employee of the California Department of Health, Community Hospitals of Central California, Blue Cross of California, or Beverly Enterprises. The information provided by the third parties was never processed for matching with tax records prepared by the petitioner to detect cases of inaccurate returns or return non-filing. The Respondent only relied on this third-party information without taking into consideration the Petitioner's return, even though the Petitioner had said on several occasions that he never admitted working for the above companies.

Due process ordinarily requires that when Petitioner Paul may be deprived of his property by governmental action, he be afforded an opportunity to be heard. The tax assessments in question here were the filings by third-party companies,

including the California Department of Health, Community Hospitals of Central California, Blue Cross of California, and Beverly Enterprises. Due process of law was never followed, as the petitioner never admitted that he billed and received payments from the California Department of Health, Community Hospitals of Central California, Blue Cross of California, and Beverly Enterprises for his medical transportation services.

Instead, due process requires an opportunity for either a predeprivation hearing or a prompt postdeprivation hearing to test the probable validity of the deprivation in order to minimize the possibility of harm due to a wrongful taking.

II. Summary judgment is inappropriate because the United States evidence was inadequate to link the petitioner to the income-producing activity of the third party's information.

Under Federal Rule of Civil Procedure 56(c), a summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 248. "[T]he judge's function is to determine whether there is a genuine issue for trial, not to weigh the evidence and determine the truth of the matter." Id. at 249. His guide is the same standard necessary to direct a verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 745 n.11 (1983).

Furthermore, the court must "view the evidence presented through the prism of the substantive evidentiary burden," so there must be sufficient evidence on which the jury could reasonably find for the plaintiff. *Anderson*, 477 U.S. at 254; *Cottle v. Storer Communication, Inc.*, 849 F.2d 570, 575 (11 Cir. 1988). Nevertheless, the credibility determinations, the weighing of evidence, and the drawing of inferences from the facts are the functions of the jury, and therefore the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor. *Anderson*, 477 U.S. at 255.

Here, Count I of the complaint alleges that Mr. Paul is liable for unpaid federal income taxes for tax years 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2012, and 2013 through 2013, plus interest and penalties. To prove Mr. Paul's tax liabilities, the United States relies on flawed third parties' filings, whom the United States believed were employers of Mr. Paul. While Count II of the complaint seeks a declaration that there are valid and subsisting federal tax liens on Mr. Paul's properties and that the United States may enforce those liens to satisfy the judgment on Count I.

A writ of certiorari is necessitated in this circumstance because the United States' assessment is flawless and is irrational to the extent of using third party filings without ascertaining whether the petitioner worked for those entities.

Caulfield v. Comm'r, 33 F.3d 991, 993 (8th Cir. 1994) (observing that an "assessment is expected to be rational, not flawless" (internal quotation marks omitted)). Federal tax liens are not self-executing. See *United States v. Nat'l Bank of Com.*, 472 U.S. 713, 719-20 (1985).

A writ of certiorari is needed because the United States has failed to produce challenging evidence negating Paul Weldon's claims and defenses that the third party's filings never linked him. The United States fails to satisfy its initial *prima facie* burden in this case because it has not produced evidence negating Paul Weldon's claims and defenses. *Nissan Fire Marine Ins. Co. v. Fritz Co.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

The United States asserts falsely and incorrectly that Weldon cannot argue that the Government's summary judgment evidence was insufficient to link him to this income-generating activity based on the names of third parties who filed Forms 1099 reporting payments to Weldon.

Weldon argues that the United States' summary judgment evidence was inadequate to link him to this income-producing activity.

First, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the United States is not entitled to a judgment as a matter of law under Fed. R. Civ. P. 56(c). In fact, the United States' motion for

summary judgment was merely supported by copies of Weldon's untimely tax returns and deposition testimony, a revenue officer's declaration, and official IRS records of information reported by third parties on Forms 1099 for the years the United States claimed Weldon did not file any returns.

Second, there was no report that all the third-party reports received by the revenue body contain a high-integrity taxpayer identifier, such as the petitioner's identification number as a primary identifier for tax purposes. Importantly, the third-party filings lacked accuracy and failed to match, particularly the petitioner's identifiers.

Third, the United States failed to quickly deal with Petitioner's adjustments arising from personalized returns; in fact, the "voucher(s)" from the tax returns that Petitioner filed in 2015, which should have created a new "assessment date," differ largely from the "assessment dates" found in the complaint, which would also change interest and penalties as well.

Fourth, the Revenue Officer's declaration alone, without facts determining whether Petitioner is related to the third parties

as the Petitioner does not know the third parties whose information was used to calculate Petitioner's tax liability.

Fifth, assuming it is well considered that I.R.C. §§ 7121 and 7122 are "the 'exclusive means' through which a compromise or settlement of tax liability is binding on the government, Petitioner still substantially complied with I.R.C. §§ 7121 and 7122; in fact, the words he typed on the back of three money orders in early 2017 that he negotiated, paying a total of \$513, eliminated all of his federal tax liabilities. (Br. 13, 25-29; see 2-SER-24, 53-55.) Under Section 7122, a compromise is generally considered to be final and binding, when accepted by the government and constitutes full settlement of the entire tax liability. *Dutton v. Commissioner*, 122 T.C. 133, 138 (2004). 16 The "clear statement of account" inscribed on the three money orders in early 2017, was clear and unambiguous, and the district court wrongly admitted parole evidence to elucidate the negotiations leading up to its tender; and under U.C.C. § 3-311. *McMahon Food Corp. v. Burger Dairy Co.*, 103 F.3d 1307 (7th Cir. 1996). The United States' accepted offer in compromise is properly analyzed as a contract between the parties. *United States*

v. Donovan, 348 F.3d 509, 512-13 (6th Cir. 2003); Roberts v. United States, 242 F.3d 1065 (Fed. Cir. 2001); United States v. Lane, 303 F.2d 1,4 (5th Cir. 1962); Robbins Tire & Rubber Co., Inc. v. Commissioner, 52 T.C. 420, 436 (1969).

Sixth, the United States has failed to "exhaust administrative remedies." The US district court lacks jurisdiction to entertain the United States' current action to reduce assessments to judgment against Petitioner because there was no authorization signed by the Attorney General under U.S. Code § 7401 and U.S. Code § 7402 (a). There was never a letter or authorization signed by the Attorney General under U.S. Code § 7401 and U.S. Code § 7402 (a) before filing this substantive action to collect an outstanding federal tax assessment against Petitioner Paul.

Seventh, there is a material dispute of facts because the IRS has not accounted to the petitioner for payments that it has made, and the petitioner does not know how or if the payments have been applied. The third-party information is hearsay under Fed. R. Evid. 803. The third-party information was not self-authenticating domestic public documents under Fed. R. Evid.

902(1) because they were certified under seal. *Hughes v. United States*, 953 F.2d 531, 539-40 (9th Cir. 1992).

Again, the tax is invalid pursuant to California Government Code, Article 2, Section 7170 (B) provides that: (b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to the recording of the notice of state tax lien in the office of the county recorder of the county in which the real property is located pursuant to Section 7171.

Finally, Petitioner never admitted that he billed and received payments from third parties such as the California Department of Health, Community Hospitals of Central California, Blue Cross of California, and Beverly Enterprises for his medical transportation services.

CONCLUSION

For the foregoing reasons, Mr. **Weldon** respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals.

Respectfully submitted, this 27 day of December 2022.

P. Weldon

Paul D. Weldon

(Pro se Appellant)