

APPENDIX

APPENDIX 1

IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
EASTERN DISTRICT OF CALIFORNIA

Civil Action 17-CV-00187-EPG

UNITED STATES OF AMERICA,
Plaintiff,

versus

MELBA L. FORD,
Defendant,

DEFENDANT'S ADDENDUM TO OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT
W/ DECLARATION IN SUPPORT

(March 14, 2018)

Overview

I do not claim any expertise in the law, especially concerning something so complicated as defending against a summary judgment motion. So, this Addendum presents more evidence supporting my claim that triable questions of fact prevent the Court from granting the summary judgment requested by Mr. Hauck.

The two strongest arguments I make concerning the existence of triable controversies concerning material facts preventing summary judgment, both involve this patently false Government claim:

“On dates and for the amounts listed below, a duly authorized delegate of the Secretary of the Treasury made timely assessments against Melba L. Ford, for individual income taxes for the taxable years set forth below:
2003 Assessment Date 02/26/2007
\$59,485.”⁴

I provide the Court, herein, with attached documents, evidence to rebut that claim on two grounds.

First, no lawful assessments were ever made on any date shown in IRS records concerning me, because IRS’ Sun Microsystems computer made the calculations and spit out unsigned “Letters” Mr. Hauck claims were substitute income tax returns/assessments. Second, *the Commissioner* disputes the Government’s inference that he delegated authority under 6020(b) to prepare substitute income tax returns/make assessments concerning me.

⁴ Mr. Hauck knowingly made that dispositive, false fact claim at Paragraph 48 of his so-called “Statement of Undisputed Facts in Support of United States’ Motion for Summary Judgment” [35-2], and, he caused Revenue Officer X to swear to the same fraud in the Declaration Hauck prepared [35-4], at Paragraph 30.

Although I raised the same two core issues in my original Opposition to Motion for Summary Judgment, the discussion and the evidence sufficient to controvert the Government's fraudulent fact claims on this matter, needed strengthening. Hence, I am filing this Addendum.

Attached, hereto, please find Exhibits that have not already been entered into the record by the Government, plus my Declaration authenticating two emails and one letter I received from Mr. Hauck discussing the falsified IRS records he is using to support his motion.

Introduction

In addition to Mr. Hauck's repeated claim quoted above, he also states in his "United States' Memorandum of Points and Authorities in Support of Its Motion for Summary Judgment", [35-1, Pg. 6, line 4]: "the IRS lawfully assessed the tax shown on the notice on February 26, 2007."

But, as shown below, no lawful assessment was made by IRS on February 26, 2007, or on any other date shown in IRS' falsified "Form 4340 Certificate of Assessments, Payments and Other Specified Matters", dated 12/02/2016. [See **Exh. A**] Further, the Commissioner claims he has no such authority that he *could* have delegated to his subordinates.

That is, the documentation provided by the Government does not support the fact claims that a duly authorized delegate of the Secretary made assessments against me on any date, let alone February 26, 2007. And, in fact, the material presented to me and to the Court by the Government proves that fact claim wholly false, thus incapable of supporting a grant of summary judgment.

Restated again, to make my argument crystal clear, I challenge these two material “facts”:

- 1.) That a lawful substitute income tax return or lawful assessment concerning me and 2003 occurred on February 26, 2007, or on any other date; and that
- 2.) The Commissioner supposedly delegated authority to make assessments for individual income taxes to any IRS employee or officer on or before February 26, 2007.

To prove my point, I will show evidence that IRS’ Sun Microsystems computer, located in Martinsburg, West Virginia, calculated the pretended assessments, then generated the unsigned 30 day Letter 2566 [Exh. C] and the unsigned 90 day Letter 3219 [Exh. H] which Mr. Hauck fraudulently pretends are “assessments” made by a duly authorized delegate of the Secretary on February 26, 2007.

It should be noted, the same problems recur with each year IRS claims I owe them taxes, whether 2003,

or any other. No deficiency for any year was calculated by a duly authorized delegate of the Secretary.

The question of whether, or not, a duly authorized delegate of the Secretary of the Treasury made any assessment on "02/26/2007" or any other date, is thus material. Since evidence submitted here controverts the claim by Government, summary judgment must be denied.

Evidence

I begin with the falsified "Certificate of Assessments, Payments and Other Specific Matters" [Exh. A], (provided by Mr. Hauck as Bates No. US-000073). I also use the falsified "Account Transcript" provided by Mr. Hauck. [Exh. B].

On the Certificate of Assessments concerning me and 2003, [Exh. A], we find not one, not two, but THREE competing dates whereon IRS directly states or infers a substitute for return/assessment was prepared by a duly authorized delegate of the Secretary of the Treasury. Those claims are stated thusly:

1. "07-11-2006 Substitute for Return"
2. "Assessment Date" "08-14-2006", and
3. "Additional Tax Assessed" on "02-26-2007"

[See Exh. A] Certificate

And, in the Account Transcript provided by the Government concerning me and 2003, [Exh. B, Pgs. 1-2], IRS adds further false inferences and claims concerning those same dates:

1. “Jul. 11, 2006” a “return” was “received” by IRS, and that

2. a “Substitute tax return was prepared by IRS” on “08-14-2006”.

But, Government-supplied evidence directly contradicts those claims that a duly authorized delegate made assessments against me on either February 26, 2007, July 11, 2006 or August 14, 2006. I will explore each claim in date order.

Was a Substitute Income Tax Return/Assessment Prepared on July 11, 2006?

When I asked in discovery for Mr. Hauck to produce the “substitute for return” or any “return” IRS claims to have received on July 11, 2006, as indicated by the Certificate [Exh. A, Pg. 1] and Account Transcript, [Exh. B, Pg. 1], he provided an unsigned computer generated “30-Day Letter 2566” [Exh. C] dated July 24, 2006, (not July 11th).

Via email dated February 8, 2018 [Exh. G], the Government lawyer provided a dispositive definition/discussion found at Internal Revenue Manual 5.18.1 of what IRS calls the “Automated

Substitute For Return” program, a.k.a. “ASFR program”. Those IRM segments are invaluable in building understanding of the Government scheme to use falsified records to enforce the income tax.

I request the Court judicially notice the following IRM sections related to the ASFR program:

In pertinent sections, IRS states as follows:

IRM Section 5.18.1.3.1 (04-06-2016) ASFR System Overview

“ASFR is a stand-alone system residing on a SUN Microsystems platform at the Enterprise Computing Center (ECC).”

IRM Section 5.18.1.1.2 (12-13-2017) Authority

“The ASFR program assesses tax by authority of Internal Revenue Code (IRC) 6020(b). IRC 6020(b) provides the authority to assess tax based on reported income information when a person fails to submit a required return.”

[But, even though IRS has not provided a signed copy of Treasury Delegation Order 5-2, I contend below that the Secretary did not grant IRS’ Sun Microsystems computer authority to calculate and prepare substitute income tax returns/assessments, pursuant to §6020(b).]

IRM Section 5.18.1.6 states:

“When ASFR processing is initiated on a module, the ASFR system will calculate the proposed tax assessment, and generate both the 30-day and 90-day letters.”

IRM Section 5.18.1.6.1. “ASFR Dummy TC 150”, states:

“When an ASFR 30-Day Letter (‘2566’) is generated, ASFR requests a TC 971 with Action Code 141 be posted to the Individual Master File module under consideration. The TC 971 triggers a dummy return to then post. The dummy return posts as a TC 150 for ‘\$0.00’ to the module. An ASFR dummy return can be identified by the literal ‘SFR’ to the right of the TC 150 on TXMODA. Additionally, the Document Locator Number (DLN) will (contain) a Julian date of 887. The Julian date for an SFR computed by the IRS Examinations Division is ‘888’.”

As mentioned in IRM 5.18.1.6.1 above, I asked Mr. Hauck to provide the TXMODA version of the Individual Master File 2003 module maintained by IRS concerning me. Mr. Hauck appended the TXMODA version to his February 22, 2018 letter to me. [Exh. D, Pg. 7 of 14] The TXMODA version of the Individual Master File tax module Mr. Hauck

provided precisely confirms the exact sequence identified in IRM Section 5.18.1.6.1, which occurs when IRS uses the ASFR program in cases involving targeted “non-filers”, as IRS labels me.

That is, the Sun Microsystems computer calculated a claimed “deficiency”, created an unsigned “proposed assessment” Letter 2566, dated July 24, 2006, then issued a TC 971 with action code 141 to the Individual Master File software, concerning me and 2003. That sequence automatically triggered the insertion into the 2003 IMF module concerning me, of the August 14, 2006 date when supposedly a “dummy return” occurred. (More on dummy returns below.)

But, I objected to being provided an unsigned, computer generated Letter 2566. Upon my request to Mr. Hauck for a copy of the SIGNED version of that Letter, (I know that “assessments” that are unsigned, are not assessments at all),⁵ he responded via email dated February 22, 2018, [**Exh. E, Pg. 2**], that “To my knowledge, it (the unsigned version) is the only version of this document that is available and there are no additional pages of which I am aware.” Thus, no signed version of the Sun Microsystems computer generated Letter 2566 dated July 24, 2006 exists.

⁵ See *Brafman v. United States*, 384 F.2d 863, (5th Cir. 1967).

That means no duly authorized delegate of the Secretary created the unsigned Letter 2566, dated July 24, 2006, (but referred to in IRS records and by Mr. Hauck as supposedly occurring on July 11, 2006). The Sun Microsystems computer calculated the alleged deficiency, then prepared the unsigned Letter 2566. Thus, no “duly authorized delegate of the Secretary” calculated the deficiency amount of “59,485.00”, or prepared the unsigned Letter on July 11, 2006, or on July 24, 2006.

Was a Substitute Tax Return Prepared by IRS on August 14, 2006?

In **Exh. B**, the Account Transcript, and in **Exh. A**, the Certificate of Assessments, IRS duplicitously labels the “dummy return” referenced there, which supposedly occurred on August 14, 2006, as both a “substitute tax return prepared by IRS”, and an “assessment”.

In the Account Transcript [**Exh. B, Pg. 1**], the computer added a Document Locator Number (DLN) to the entry concerning the purported August 14, 2006 event, which it describes as: “150 Substitute tax return prepared by IRS 19210-887-00098-6.” That would make any uninformed reader believe IRS prepared a substitute income tax return/assessment on August 14, 2006.

But, when I asked Mr. Hauck for a copy of the “dummy return” occurring on “08-14-2006”, he speculated via Letter dated February 1, 2018 [Exh. F]:

“I have made a request for Document Locator Number (DLN) 19210-887-00098-6, *I expect* that document is your 30 Day letter.” (The unsigned Letter 2566 dated July 24th.)

Then, in an email from Mr. Hauck, dated Thursday, February 8, 2018, [Exh. G], he speculated again:

“I clarified that the entry on your 2003 Account Transcript ... ‘150 Substitute tax return prepared by IRS 8-14-2006 0.00’ *was likely* an entry that resulted from the IRS receiving no response to the 30 Day Letter. [The unsigned computer generated Letter 2566.] As described, the \$0.00 on the entry does not mean that the return prepared by the IRS reflected zero tax due, rather it simply indicates that there was no change to your account as a result of the entry. I further explained that I have made a request for Document Locator Number (DLN) 19210-887-00098-6, but that *I expect* that document is your 30 Day Letter”, (which is the unsigned, computer-generated document dated July 24, 2006).

He continued:

“I believe I have explained that no paper 1040 was filled out for you by some individual IRS worker. **Your tax liability was determined by a computer**, hence the ‘Automated’ part of the ASFR acronym.” [Emph. add.]

“Additionally, when the IRM states ‘dummy return’ I understand it is referring to an electronic place-holder. There is no dummy return that can be printed or produced.”

So, the U.S. Government concedes that a computer calculated my supposed liability in the 30 Day Letter 2566 on either July 11th, 2006 or July 24th, 2006, and that no document, no dummy return, or substitute income tax return/assessment was prepared by IRS on August 14, 2006, even though IRS records concerning me show “Substitute tax return prepared by IRS 08-14-2006”.

NOTHING occurred on that date, except a computer entry made by the Sun Microsystems computer in the Individual Master File module for 2003, which entry “Substitute tax return prepared by IRS 08-14-2006” resulted from the computer-generated TC 971 with action code 141, described above.

That means, the Government enforces the income tax by falsifying federal records, fabricating the appearance of “placeholder” “dummy returns” that

don't exist, claiming "0.00" amounts are due, then claiming in falsified Account Transcripts that automated inter-data base entries between IRS' Sun Microsystems platform and IRS' Individual Master File software are "Substitute tax returns prepared by IRS". [Exh. B]

Was a Substitute Tax Return Prepared by IRS on February 26, 2007?

February 26, 2007 is the last of the three false dates shown in IRS Certificate of Assessment as when an "assessment" supposedly occurred. On that same date, IRS' Account Transcript shows: "290 Additional tax assessed 02-26-2007 \$59,485.00", and we see a Document Locator Number related to that Transaction Code 290: "83254-438-64129-7".

When I asked Mr. Hauck for all the documents associated with the 290 transaction, such as the assessment Mr. Hauck claims was prepared on February 26, 2007, he speculated via Letter on February 1, 2018, [Exh. F]:

"As discussed, this entry ***is likely*** the result of your defaulted Statutory Notice of Deficiency. A reproduction of your Statutory Notice of Deficiency ("90-Day Letter 3219") was included as Exh 8 to your deposition. As noted, the Statutory Notice of Deficiency reflects a deficiency of \$59,485.00, which is the same as

the entry at issue. We further discussed that the DLN 83254-438-64129-7 has previously been requested (by Hauck from IRS) with negative results, but that document *is likely* the same in substance as the Statutory Notice of Deficiency already provided.” [Emph. added] The unsigned “90-Day Letter 3219” [Exh. H], which is dated September 11, 2006, was provided by Mr. Hauck as part of Doc. 35-7, Pgs. 13-22.

The Government never provided any document related to the TC 290 reflected in the Account Transcript associated with Feb. 26, 2007, other than the unsigned, Sun Microsystems computer-generated 90 Day Letter 3219 dated September 11, 2006.

The Government has thus conceded, without stating, that no document exists that was prepared by IRS on February 26, 2007. That means, nothing happened on February 26, 2007, except an IRS clerk entered a “290” transaction code into the 2003 IMF module concerning me, then entered the deficiency numbers calculated by the Sun Microsystems computer in July 2006, which numbers were regurgitated by that computer in its unsigned September 11, 2006 90-Day Letter 3219.

Interestingly, we should also note that the so-called “6020(b) Certification” appended to the 90-Day Letter 3219 by Mr. Hauck is dated July 24, 2006. So,

said Certification is not related at all to the 90-Day letter.

The Certification was generated by the Sun Microsystems computer simultaneously with the unsigned 30-Day Letter 2655 dated July 24, 2006. (That 6020(b) Certification is discussed below with respect to Treasury Delegation Order 5-2, next.)

We also note that the dollar amounts the Sun Microsystems computer calculated in the 30-Day letter 2566, [Exh. C, Pg. 3] exactly match the numbers the same computer produced when it generated the 90-Day letter 3219, [Exh. H, Pg. 1]: an alleged principal of "59,485.00", with identical penalty amounts, both of which exactly match the amount entered on February 26, 2007 in the IMF 2003 module concerning me as part of the transaction coded 290.

That means NO "Additional tax" was actually assessed on February 26, 2007 when the IRS employee entered the Transaction Code "290 Additional Tax Assessed" with the deficiency amount of 59,485 on "02-26-2007" into the Individual Master File module concerning me and 2003.

Since no other document was provided by the Government concerning "02-26-2007" we can see that no duly authorized delegate of the Secretary of the Treasury made any assessment against me on

February 26, 2007, contrary to the Government attorney's repeated false claim.

**Evidence Summary with Regard to Alleged
"Substitute Income Tax Returns/Assessments"**

IRS' Sun Microsystems computer calculated and prepared unsigned documents dated July 24, 2006 and September 11, 2006, NEITHER OF WHICH DATES ARE MENTIONED in IRS' Individual Master File records concerning me, and which documents the Government is pretending to be "substitute income tax returns"/"lawful assessments."

Said differently, IRS' Sun Microsystems computer calculated and created two Letters concerning me and 2003, which are invisible, (meaning they are not documented) in IRS' all-controlling Individual Master File record concerning me and 2003. No other documents exist purporting to be assessments or returns.

Thus, no duly authorized human delegate of the Secretary of the Treasury made any timely assessment on any date shown in IRS' falsified digital records, or on any date shown in IRS-falsified paper documents built thereon: the "Certificate of Assessments..", and the "Account Transcript".

That failure by any authorized delegate to prepare substitute income tax returns supports the Commissioner's multiple claims he has no authority

to delegate, hence, did not re-delegate, authority to prepare substitute income tax returns, as shown next.

The 6020(b) Certification

In the computer generated “IRC Section 6020(b) ASFR Certification” dated July 24, 2006, which Mr. Hauck incorrectly appended to the 90 Day Letter 3219 [See **Exh. H**, Bates No. 000069], the Sun Microsystems computer claims:

“The officer of the IRS identified below, authorized by Servicewide Delegation Order 5-2, certifies that he or she intends the electronic data contained as part of the taxpayer’s account and identified below, to constitute a valid return under section 6020(b).”

But, the Commissioner directly, repeatedly contradicts the Sun Microsystems computer’s claims that he supposedly authorized “Jan Sinclair” (or anyone else) to prepare substitute income tax returns/assessments.

For examples, he discusses the authority under 6020(b) (to perform substitutes for return) in the Internal Revenue Manual §5.1.11.6.7, the “Bible” to IRS employees. That IRM shows the authority under §6020(b) is limited to matters involving “**employment, excise and partnership taxes**”, and does not include the income tax. Link here:

http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html, scroll down to 5.1.11.6.7 “IRC 6020(b) Authority”.]

Further, in his Privacy Impact Assessment concerning 6020(b), the Commissioner precisely confirms that same limitation. Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf

And, in the Revenue Officer’s Training Manual, (Unit 1, Page 23-2), “Effective date: 12-14-83 Authority to Execute Returns, [See **Exh. I**], the Commissioner adds this powerful explanation WHY he has no authority to prepare substitute income tax returns/assessments:

“The IRM restricts the broad delegation shown in figure 23-2 (6020(b))... to employment, excise and partnership tax returns ***because of constitutional issues.***”
[Emphasis added.]

Importantly, on July 29, 1998, IRS’ Assistant Chief Counsel (Income Tax & Accounting) produced a “Memorandum” [**Exh. J**] that “In no event shall be disclosed to taxpayers or their representatives”. Therein, the Commissioner’s Assistant Chief Counsel states:

“The penalties of perjury statement has important significance in our tax system. The statement connects the taxpayer’s attestation

of tax liability (by the signing of the statement) with the Service's statutory ability to summarily assess the tax." Link here:
<https://www.irs.gov/pub/irs-sca/1998-053.pdf>

Stated in its obverse, the statement by the secretive IRS Assistant Chief Counsel concedes that if a "non-filer" does not sign the perjury statement of a Form 1040, she does not connect any supposed tax liability she owes to the Service's ability to summarily assess the tax. That appears to mean that IRS' lawful assessment power concerning income tax begins upon the signature of a taxpayer.

That concession by the Assistant Chief Counsel explains and supports the Commissioner's multiple public pronouncements cited previously, that 26 U.S.C. §6020(b) does not provide him the ability to summarily assess income taxes in cases involving "non-filers". The Commissioner claims he lacks such authority, hence he could not delegate, and did not delegate, such power on any date, contrary to the false claims of his Sun Microsystems computer, Mr. Jonathan Hauck, his proxy X, and any other government-employed attorney.

Addendum Summary

The Government's claims that a duly authorized delegate of the Secretary of the Treasury made an assessment against me for 2003 on the Assessment

date 02/26/2007, or on any other date claimed in IRS' falsified Certificate of Assessment and Account Transcript, are not properly supported by any material presented.

On the contrary, the evidence presented shows that IRS' Sun Microsystems computer calculated on July 24, 2006 the "assessment" Mr. Hauck claimed was prepared on February 26, 2007 by "a duly authorized delegate of the Secretary."

Moreover, I have shown that the Commissioner disagrees with the claims of his Sun Microsystems computer, Mr. Hauck and X, that his authority under 6020(b) extends to income tax. He claims he has no authority pursuant to 6020(b) to delegate to his subordinates in regard to income tax. Hence, he did not delegate such power, but uses computer and document fraud to conceal that inability/FAILURE.

He never delegated any authority to anyone, or to any computer, prior to February 26, 2007, to create any substitute income tax return concerning me and 2003.

Summary Judgment cannot be awarded the Government, based upon the extensive document fraud, in fact, a shell game, the Government has committed concerning the key fact claim Mr. Hauck made: that a "duly authorized delegate of the Secretary" prepared "a lawful assessment"

concerning me and 2003 on “February 26, 2007.” No such thing occurred, and never will.

Relief Requested in this Addendum

I respectfully request the Court

1. NOTICE the IRM sections identified above.
2. Notice the evidence appended hereto, or provided by the Government and cited herein;
3. Determine that the evidence I have presented raises material, triable questions of fact whether the Secretary/Commissioner delegated authority to prepare substitute income tax returns/lawfully signed assessments on any dates shown in IRS records concerning me, and whether in fact any substitute income tax return/lawful assessment was prepared on any date shown in IRS records concerning me.

Thus, accordingly, I move the Court to

4. Deny the Government’s Motion for Summary Judgment.

Further, as already requested in my Defendant’s Opposition to Summary Judgment Motion, I reiterate herein my motion to strike the Declaration of X prepared by Mr. Hauck. It contains deliberately false information concerning the pretended preparation of a non-existent assessment, supposedly occurring on February 26, 2007. It was, thus,

submitted in bad faith, so must be stricken in its entirety.

Finally, if the Court perceives any defect in my presentation of the evidence discussed herein, I request opportunity to complete my discovery, receive the answers to my Interrogatories propounded to the DoJ/IRS on February 27, 2018, and amend my Opposition documentation appropriately, under the direction of the Court.

It is so requested and respectfully presented.

Melba Ford

Verification/Declaration

Comes now Melba Ford, declaring under penalty of perjury, pursuant to 28 USC §1746, that the facts stated in the foregoing **“Addendum to Defendant’s Opposition to Motion for Summary Judgment”** are absolutely true and correct in every detail.

I also declare under penalty of perjury that the Exhibits to which I refer, which Mr. Hauck sent me, including his February 1, 2018 Letter, his emails of February 8, 2018 and February 22, 2018, and the documents he appended to those correspondences, are true and correct copies of the documents I received from him.

Further Affiant Says not,

Melba Ford

APPENDIX 2

IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
EASTERN DISTRICT OF CALIFORNIA

Civil Action 17-CV-00187-DAD

UNITED STATES OF AMERICA,
Plaintiff,

versus

MELBA L. FORD,
Defendant,

MOTION to CLARIFY FACTS
PRECLUDING SUMMARY JUDGMENT
with Brief and Declaration in Support

(March 27, 2018)

This motion is filed to show evidence of the FACTS that *the Commissioner* contends his authority under 6020(b) does not extend to income tax, but uses computer and document fraud to conceal that lack. That evidence also counters the presumption of validity typically accorded a Certificate of Assessments and Payments, as presented by the Government in this case, since, as shown, no Summary Record of Assessment was signed by a duly

authorized IRS officer/employee on any date shown in the falsified Certificate.

Finally, this Motion is filed to counter any claim by a government-employed attorney that the mere entry by an IRS data entry clerk into the IMF software on February 26, 2007 of an alleged “deficiency” amount, is an “assessment” supposedly made by a duly authorized delegate of the Secretary of the Treasury. Data entry clerks are not authorized to make income tax assessments.

The evidence provided raises this ultimate FACT question, precluding summary judgment: Did a “duly authorized delegate of the Secretary of the Treasury make timely assessment against (me)” on February 26, 2007, as the Government materially contends?

The Brief in support of this Motion explains the legal significance of a Summary Record of Assessment, what a Certificate of Assessments is and its legal significance, who can make determinations of deficiencies, as required by Congress at 26 U.S.C. §6212, and how the unclean hands doctrine prevents any judgment favoring the Government.

Introduction

Attached to my Addendum to Opposition to Motion for Summary Judgment [Doc. 47] I presented

documentary evidence as “Exhibits A-J”⁶ tending to prove that the Internal Revenue Service (IRS) is operating a scheme to enforce the income tax by falsifying federal records concerning those IRS claims “fail to file a return”, (a.k.a. “nonfilers” in IRS parlance).

Specifically, to justify seizing my property, the Government falsified the following digital and paper records IRS maintains concerning me and 2003, as discussed in detail below:

- a.) IRS’ Individual Master File software record (“IMF”),
- b.) a paper “Account Transcript” derived from the underlying falsified IMF record, which has been “sanitized” to conceal critical entries made in the IMF, and falsified to create the appearance of documents that do not exist, [Exh. B], and
- c.) the paper “Form 4340 Certificate of Assessments, Payments and Other Matters”, [Exh. A], concerning me and 2003, which the Government presented in support of its summary judgment motion, which was falsified to reflect assessments which never occurred.

⁶ I incorporate fully herein, by reference, Exhibits A-J attached to my Addendum to Opposition to SJM [47].

That is, the Government proffered the Certificate of Assessments as presumptive proof to support its material claim that “a duly authorized delegate of the Secretary of the Treasury made timely assessments against me for individual income taxes,” for “2003 on February 26, 2007”, in the “amount of \$59,485.00.”⁷ But, evidence proves no Summary Record of Assessment was signed by any duly authorized delegate on any date shown in the Certificate.⁸

⁷ Attorney Jonathan Hauck made that false fact claim at Paragraph 48 of his so-called “Statement of Undisputed Facts in Support of United States’ Motion for Summary Judgment” [35-2]. He also caused Revenue Officer X to swear to the same claim in the Declaration Hauck prepared [35-4], at Paragraph 30. In addition, Mr. Hauck also states in his “United States’ Memorandum of Points and Authorities in Support of Its Motion for Summary Judgment”, [35-1, **Pg. 6, line 4**]: “the IRS lawfully assessed the tax shown on the notice on February 26, 2007.” He knows no such thing occurred.

⁸ As discussed below, (Pg. 8), both Mr. Hauck and Mr. Drozd claim that my supposed failure to contest the “90-Day Letter 3219” dated September 11, 2006 (issued by IRS’ Sun Microsystems Computer without any human intervention on August 29, 2006), coupled with the mere entry on February 26, 2007 by an IRS data entry clerk of the dollar amounts calculated by that Computer on July 11, 2006, is itself supposedly an assessment by a duly authorized delegate of the Secretary. I disagree. Details on Pg. 8.

So, restated, I am contesting the Government's core FACT claim cited in the paragraph immediately above, on three levels.

First, the Commissioner claims he has no delegable authority to prepare substitute income tax returns/assessments, thus he DID NOT MAKE such delegation on or before any date shown in the Certification.

Second, I contend that no Summary Record of Assessment was ever signed on any date shown in the repeatedly falsified Certificate, destroying the presumption it is valid proof a claimed tax liability was properly assessed against me. (This presents a FACT question a jury should decide.)

Third, the mere entry of a deficiency amount made by an IRS order entry clerk on February 26, 2007, is not an "assessment" by a duly authorized delegate of the Secretary.

In sum, and as shown below in detail, evidence proves that no duly authorized delegate of the IRS prepared, or signed, a Summary Record of Assessment concerning me and 2003 on either July 11, 2006, August 14, 2006 or on February 26, 2007, three dates shown in the falsified Certificate

presented to the Court.⁹ Thus, the Court cannot accept the “Certificate of Assessments and Payments” submitted by the Government as presumptive proof a valid assessment was made. A trial must be held to determine whether a valid assessment was ACTUALLY made by any duly authorized delegate of the IRS on ANY date.

And, since the Government is relying upon falsified documents to justify summary judgment, the “unclean hands” doctrine precludes such judgment with respect to all the years and all the “penalties” in question, not just limited to 2003.

March 20, 2018 Hearing

In the hearing on March 20th, The Hon. Dale A. Drozd went out of his way to avoid mentioning or addressing the fact issues I have raised concerning the falsified Certificate and other documents presented by the Government in this case. Instead, he repeatedly claimed:

“[T]he issues being raised by Ms. Ford are legal – are questions of law as opposed to questions of fact, and that summary judgment is therefore not precluded”. [See **Exh. A**, March

⁹ Contrary to Mr. Drozd’s claim, I am not merely complaining that documents created by the Sun Microsystems Computer are unsigned. I complain, instead, that NO assessment was made by any duly authorized delegate of the Secretary on any date, EVER. BIG difference.

20, 2018 Hearing Transcript, Pg. 5, Line 23,
and Pg. 6, Line 16.]

Hence, to ensure Judge Drozd realizes that FACT issues preclude summary judgment, I have filed this Motion. Interestingly, during that hearing, Mr. Drozd also telegraphed his support of summary judgment, speaking to the Government thusly:

“So, as I understand your argument, it is, look, the letter that Ms. Ford is arguing wasn’t signed was not the assessment itself, that the assessment was properly issued under 26 USC §6212, and that the entire ASFR program is not subject to legal challenge, but is authorized by statute.”[**Exh. A**, Hearing Transcript, Pg. 10, line 14, et seq.]

It thus appears Mr. Drozd has reduced my core FACT claim that no substitute income tax return/Summary Record of Assessment was signed by any duly authorized delegate of the Secretary on ANY DATE shown in IRS records, into an easily dispensed-with complaint that IRS’ Sun Microsystems Computer issues unsigned Letters.

Accordingly, before ruling on the Summary Judgment motion, which rests upon the falsified Certificate of Assessments, I respectfully request the Judge address the following FACTS.

Fact Question: Did any duly authorized delegate sign an assessment against me?

FACT 1. Contrary to the Government's claim that a "duly authorized delegate of the Secretary of the Treasury made an assessment against (me)" concerning 2003 on "02/26/2007", ¹⁰ IRS records shown that no human signed an assessment concerning me on any date shown in the Form 4340 Certificate of Assessments.¹¹

FACT 2. The Form 4340 Certificate of Assessments presented by the Government, [Exh. A] was thus repeatedly falsified.¹²

FACT 3. Prefatory to fabricating the falsified Certificate, IRS falsified the underlying Individual Master File (IMF) record concerning me and 2003, to reflect IRS' pretended receipt of a return on July 11, 2006, which "return" IRS claims supposedly showed a "0.00" amount due. [See **Exh. B**, Account Transcript, Pg. 1."Return Received Date, Jul 11,

¹⁰ See Footnote 2. for citations to Mr. Hauck's repeated claim.

¹¹ In the absence of evidence to the contrary, Certificates of Assessments and Payments will generally be regarded as sufficient proof of the adequacy and propriety of notices and assessments that have been made. Gentry v. United States, 962 F.2d 555, 557 (6th Cir. 1993). In this case I am presenting overwhelming proof rebutting the presumption the Form 4340 Certificate of Assessments presented by Mr. Hauck is valid. [See Brief in Support of this motion for discussion of such Certificates, and how to properly challenge their validity.]

¹² Whether or not a federal record has been falsified is a FACT question, contrary to Mr. Drozd's errant claims.

2006”, and See **Exh. D, TXMODA**, Pg. 3] IRS received no return from me on the “return received date”.

FACT 4. On July 11, 2006, IRS used its Sun Microsystems Computer to create the impression a.) it received a return on that date showing “0.00” amount due, and that b.) IRS supposedly created a “dummy return” on “08-14-2006”, which “dummy return” IRS has conceded does not even exist, (as shown below).

FACT 5. IRS defined its ASFR program at IRM §5.18.1.3.1¹³

¹³ **IRM Section 5.18.1.3.1 (04-06-2016) ASFR System Overview**

“ASFR is a stand-alone system residing on a SUN Microsystems platform at the Enterprise Computing Center (ECC).”

IRM Section 5.18.1.1.2 (12-13-2017) Authority

“The ASFR program assesses tax by authority of Internal Revenue Code (IRC) 6020(b). IRC 6020(b) provides the authority to assess tax based on reported income information when a person fails to submit a required return.”

[But, even though IRS has not provided a signed copy of Treasury Delegation Order 5-2, I contend below that the Secretary did not grant IRS’ Sun Microsystems computer authority to calculate and prepare substitute income tax returns/assessments, pursuant to §6020(b).]

IRM Section 5.18.1.6 states:

“When ASFR processing is initiated on a module, the ASFR system will calculate the proposed tax

FACT 6. IRS uses the Sun Microsystems Computer, (“SMS Computer”), to create the appearance IRS prepares assessments when no such thing occurs.

FACT 7. On July 11, 2006, as confirmed by IRM §5.18.1.6.1, (See Footnote 9), IRS used its SMS Computer to simultaneously a.) create a “30 day letter” dated July 24, 2006, and to b.) post in the individual master file, concerning me and 2003, a false claim that IRS supposedly prepared a so-called “dummy return” on the claimed date of “08-14-2006.”

FACT 8. To produce the falsification in the IMF module concerning the date “08-14-2006,” IRS’ SMS Computer used a transaction numbered “971”, in combination with “action code 141” to request the IMF computer software to enter into the 2003

assessment, and generate both the 30-day and 90-day letters.”

IRM Section 5.18.1.6.1. “ASFR Dummy TC 150”,
states:

“When an ASFR 30-Day Letter (‘2566’) is generated, ASFR requests a TC 971 with Action Code 141 be posted to the Individual Master File module under consideration. The TC 971 triggers a dummy return to then post. The dummy return posts as a TC 150 for ‘\$0.00’ to the module. An ASFR dummy return can be identified by the literal ‘SFR’ to the right of the TC 150 on TXMODA. Additionally, the Document Locator Number (DLN) will (contain) a Julian date of 887. The Julian date for an SFR computed by the IRS Examinations Division is ‘888’.”

module concerning me the baseless entry reflected in the Account Transcript as “150 Substitute for Return prepared by IRS 08-14-2006 \$0.00.” No such return exists, dummy or otherwise.

FACT 9. Then, later, in the falsified Certificate presented by the Government, IRS fraudulently labeled the date entry of “08-14-2006”, (injected by the SMS Computer into the IMF on July 11, 2006 via the TC 917 with action code 141), not as a dummy return, but as an “assessment” which supposedly occurred on “08-14-2006”.

FACT 10. More specifically, the Certificate was falsified to reflect IRS’ pretended preparation of a Summary Record of Assessment (Form “23C or RAC 006”) on “08-14-2006”, when no such assessment or Summary Record existed to be signed, and, in fact, no dummy return exists either.

FACT 11. IRS uses “dummy returns” in income tax cases to conceal the Commissioner’s conceded lack of authority to prepare substitute income tax returns.¹⁴

¹⁴ He discusses the authority under 6020(b) (to perform substitutes for return) in the Internal Revenue Manual §5.1.11.6.7, the “Bible” to IRS employees. That IRM shows the authority under §6020(b) is limited to matters involving “**employment, excise and partnership taxes**”, and does not include the income tax. Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-

FACT 12. As conceded by the Government, “Dummy returns do not exist, as anything other than an electronic place-holder, per IRM §5.18.1.6.4”.¹⁵ See **Doc. 46**, U.S. Reply Brief, pg. 5, line 17.

cont01.html, scroll down to 5.1.11.6.7 “IRC 6020(b) Authority”.]

Further, in his Privacy Impact Assessment concerning 6020(b), the Commissioner precisely confirms that same limitation. Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf

And, in the Revenue Officer’s Training Manual, (Unit 1, Page 23-2), “Effective date: 12-14-83 Authority to Execute Returns, [See **Exh. I**], the Commissioner adds this powerful explanation WHY he has no authority to prepare substitute income tax returns/assessments:

“The IRM restricts the broad delegation shown in figure 23-2 (6020(b))... to employment, excise and partnership tax returns ***because of constitutional issues.***”

¹⁵ But, when I asked Mr. Hauck for a copy of the “dummy return” occurring on “08-14-2006”, he speculated via Letter dated February 1, 2018 [**Exh. F**]: “I have made a request for Document Locator Number (DLN) 19210-887-00098-6, ***I expect*** that document is your 30 Day letter.” (The unsigned Letter 2566 dated July 24, 2006.) Then, in an email from Mr. Hauck, dated Thursday, February 8, 2018, [**Exh. G**], he speculated again: “I clarified that the entry on your 2003 Account Transcript ... ‘150 Substitute tax return prepared by IRS 8-14-2006 0.00’ ***was likely*** an entry that resulted from the IRS receiving no response to

FACT 13. In discovery, the Government conceded that no Summary Record of Assessment, nor any other paper document, exists concerning the date August 14, 2006, which is one of the dates shown on the Certificate as when an Assessment was supposedly made.

FACT 14. The alleged “deficiency” amount of 59,485 did not get entered into the IMF until February 26, 2007, via a transaction numbered “290”.

FACT 15. IRS defines a transaction “290” as an “Additions to Tax”.

FACT 16. IRS’ Sun Microsystems Computer prepared a “Statutory Notice of Deficiency”, a Letter

the 30 Day Letter. [The unsigned computer generated Letter 2566.] As described, the \$0.00 on the entry does not mean that the return prepared by the IRS reflected zero tax due, rather it simply indicates that there was no change to your account as a result of the entry. I further explained that I have made a request for Document Locator Number (DLN) 19210-887-00098-6, but that ***I expect*** that document is your 30 Day Letter”, (which is the unsigned, computer-generated document dated July 24, 2006). He continued: “I believe I have explained that no paper 1040 was filled out for you by some individual IRS worker. **Your tax liability was determined by a computer**, hence the ‘Automated’ part of the ASFR acronym.” [Emph. add.] “Additionally, when the IRM states ‘dummy return’ I understand it is referring to an electronic place-holder. There is no dummy return that can be printed or produced.”

3219", a.k.a. "90-Day Letter", on August 29, 2006, but dated it September 11, 2006. [See **Exh. H**]

FACT 17. The Letter 3219 is not a signed Summary Record of Assessment, but a computer-generated document.

FACT 18. In the Certificate proffered by the Government, IRS' IMF software placed a "Document Locator Number" ("DLN") beside the entry "Additional Tax Assessed - 59,485 - 02-26-2007". That DLN number is: "83254-438-64129-7"

FACT 19. The date "02-26-2007" is also reflected in TXMODA [**Exh. D**] and in the Account Transcript, [**Exh. B**, Pg. 2], and shows that to be when IRS entered a "290" transaction into the IMF module concerning me and 2003.

FACT 20. In discovery, I explicitly requested ALL documentation related to the entry of data made into the IMF on "02-26-2007" and related to DLN 83254-438-64129-7.

FACT 21. Other than the unsigned, Sun Microsystems computer-generated 90 Day Letter 3219 dated September 11, 2006, the Government failed to provide ANY document related to the TC 290 shown in the Account Transcript as occurring on February 26, 2007.

FACT 22. The Government thus conceded that no Summary Record of Assessment (23C, RAC 006, etc.), was prepared by IRS on February 26, 2007.

FACT 23. Nothing happened on February 26, 2007, except an IRS clerk entered a “290” transaction code into the 2003 IMF module concerning me, then he/she entered the alleged deficiency numbers calculated by the Sun Microsystems computer on July 11, 2006, which numbers were reiterated by that computer in its unsigned September 11, 2006 90-Day Letter 3219.

FACT 24. The Certificate was falsified to reflect that supposedly an “Additional Tax (was) Assessed” on “02-26-2007,” when no such “additional assessment” was made on that date, or on any other date, by a duly authorized delegate of the Secretary.

FACT 25. The Certificate was falsified to conceal the fact that a mere data entry clerk entered into the 2003 IMF concerning me the deficiency amount calculated by IRS’ Sun Microsystems computer on or about July 11, 2006, in order to circumvent the Commissioner’s conceded lack of authority to prepare substitute income tax returns.

FACT 26. Since the Government falsely claimed as a material fact that “a duly authorized delegate of the Secretary of the Treasury made timely assessments against (me) for individual federal income taxes... for

2003, on 02/26/2007 for \$59,485.00.” [See Gov’t. Statement of Undisputed Facts, [35-2, Pg. 8, ¶48], and Declaration of Revenue Officer, [35-4, Pg. 5, ¶30, line 21], and since the Certificate provided was falsified to conceal the fact no Assessment was made by a duly authorized delegate of the Secretary on ANY date, that Certificate cannot be used to establish that the claimed tax liability was properly assessed against me.

Government Raised Question

Desperate to justify the Government’s seizure of my property, but knowing that no Summary Record of Assessment occurred on any date shown in IRS’ Certificate, or other records, Mr. Hauck repeatedly contended that "the assessment came from the defaulted statutory notice of deficiency", (**Hearing, 20 March, Pg. 9, Line 9**), and that: "the only technical issue that is required in order to have a valid assessment is the defaulted statutory notice of deficiency." (**Hearing, 20 March, Pg. 9, Line 13, et seq.**).

Hauck restated it yet again thusly, (**at Hearing, 20 March, Pg. 11, line 2**), "In terms of the questions, you mean, that the assessment is valid if there is a defaulted statutory notice of deficiency?", to which Mr. Drozd responded in the affirmative: "Right."

That means the attorneys are contending that my alleged "failure" to contest the Sun Microsystems Computer's Letter 2566 dated July 24, 2006 and Letter 3219 dated September 11, 2006, coupled with the entry by an IRS data entry clerk of the alleged deficiency I supposedly owe of 59,485, itself, constitutes a valid assessment, despite the failure of any duly authorized delegate of the Secretary to sign any assessment.

I disagree with the attorneys. Here's why:

26 U.S.C. § 6203 provides that "[t]he 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 C.F.R. § 301.6203-1 provides, in part, that "... [t]he assessment shall be made by an assessment officer signing the summary record of assessment. The summary record through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment ... The date of the assessment is the date the summary record is signed by an assessment officer ..." This document is known as Form 23-C within the Internal Revenue Service, (or RAC 006).

The basis of tax liability is the assessment. For a tax liability to be duly collected, it must be first properly assessed. In order for a tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C, RAC 006 or similar.

Since no Summary Record of Assessment was prepared by any duly authorized delegate on any date shown in the falsified IRS Certificate, and since data entry clerks are not authorized to prepare assessments, clearly, summary judgment must be denied.

Relief Requested

I respectfully request that the Court

1. Notice the Certificate presented by the Government appears to have been falsified to reflect assessments that never occurred;
2. Deny the Government's motion for summary judgment;
3. Set the case for trial to determine whether a duly authorized delegate of the Government prepared and signed a Summary Record of Assessment against me concerning 2003.
4. Further, as already requested in my Opposition to Summary Judgment Motion [44], and in my Addendum to Opposition to Summary Judgment [47],

I reiterate, herein, my motion to strike the "Declaration" of X [35-4] prepared by Mr. Hauck. It contains deliberately false information concerning the pretended preparation of non-existent assessments, not only on February 26, 2007, but also on August 14, 2006. It was, thus, submitted in bad faith, so must be stricken in its entirety.

Finally, 5., if the Court perceives any defect in my presentation of the evidence discussed herein, I request opportunity to complete my discovery, receive the answers to my Interrogatories propounded to the DoJ/IRS on February 27, 2018, and amend my documentation appropriately, under the direction of the Court.

It is so requested and respectfully presented.

Melba Ford

Verification/Declaration

Comes now Melba Ford, declaring under penalty of perjury, pursuant to 28 USC §1746, that every single fact stated in the foregoing "**Motion to Clarify...**" is absolutely true and correct in every detail.

I also declare under penalty of perjury that the Exhibits to which I refer, are true and correct copies of the documents I have in my possession.

Further Affiant Says not,

Melba Ford

APPENDIX 3

IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
EASTERN DISTRICT OF CALIFORNIA

Civil Action 17-CV-00187-DAD

UNITED STATES OF AMERICA,
Plaintiff,

versus

MELBA L. FORD,
Defendant,

BRIEF in SUPPORT OF
MOTION to CLARIFY FACTS
PRECLUDING SUMMARY JUDGMENT

(March 27, 2018)

I am always learning. So, in this Brief, I explain the legal significance of a Summary Record of Assessment, what a Certificate of Assessments is and how to rebut the presumption of its validity as to assessments supposedly made, what requirement is imposed upon the Government in 26 U.S.C. §6212, and how the unclean hands doctrine prevents any judgment favoring the Government.

A Summary Record of Assessment

A "Summary Record of Assessment" is described in *U.S. v. Dixon*, 672 F. Supp. 503 – Dist. Court, MD Alabama 1987:

"26 U.S.C. § 6203 provides that '[t]he 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 C.F.R. § 301.6203-1 provides, in part, that '... [t]he assessment shall be made by an assessment officer signing the summary record of assessment. The summary record through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment ... The date of the assessment is the date the summary record is signed by an assessment officer ...'

"Both parties state in their briefs that this document is known as Form 23-C within the Internal Revenue Service."

"The defendant correctly contends that the basis of tax liability is the assessment. For a tax liability to be duly collected, it must be first properly assessed. In order for a tax

deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C."

This means that an assessment, whether a "23C," "RAC 006" or similar, must exist and be signed by a duly authorized delegate of the Secretary, which the Government concedes when it claims "a duly authorized delegate of the Secretary of the Treasury made timely assessments against" me... [See Gov't. Statement of Undisputed Facts, [35-2, Pg. 8, ¶48], and Declaration of Revenue Officer, [35-4, Pg. 5, ¶30, line 21.]

Rebutting the Presumption of the Validity of the Certificate of Assessments

I confirmed via *In re Alternative Publications, Inc.* 186 BR 912 0 Bankr. Court, SD Ohio, 1995, that either the "summary record of assessments" (23C, etc.), or a "Certificate of Assessments" is what is REQUIRED to be signed, in order to properly support IRS' inference an assessment was properly made. In my case, as summary judgment proof, the Government has provided only a signed Form 4340 Certificate. The Government did not provide a summary record of assessments, 23C or RAC 006.

The Certificate presented appears facially valid. *In re Alternative*, however, shows the possibility that a person can rebut the presumption that even a properly signed Certificate is valid.

“In the absence of evidence to the contrary, Certificates of Assessments and Payments will generally be regarded as sufficient proof of the adequacy and propriety of notices and assessments that have been made. *Gentry v United States*, 962 F.2d 555, 557. See also *Long v. United States*, 972 F.2d 1174, 1181 (10th Cir.1992) (“for purposes of granting summary judgment, Certificates of Assessments and Payments are sufficient evidence that an assessment was made as required by § 6203 and Treasury Reg. 301.6203-1”); *United States v. Dixon*, 672 F.Supp. 503, 505-06 (M.D.Ala. 1987) (Certificates of Assessments and Payments are presumptive proof of valid assessment absent evidence to the contrary), *aff’d*. 849 F.2d 1478 (11th Cir.1988).”

Since the “Debtor” in *In re Alternative* failed to provide any evidence whatsoever to rebut the presumption as to the validity of the assessments made in light of the Certificates of Assessments and Payments filed by the IRS, the Certificate was held to be presumptively valid. But, as presented in my Motion, we know that no assessment was signed by any authorized delegate of the Secretary in regard to me and 2003, on any date shown in the falsified Certificate of Assessment. That is, no assessment was prepared and signed concerning me and 2003 on August 14, 2006, or on February 26, 2007, even though those dates are reflected in the Certificate column headed “Assessment Date (23C, RAC 006)”,

which, thus, falsely states that such assessment entries were made on "08-14-2006" and on "02-26-2007."

Thus, although the Certificate infers that "the assessment was entered in accordance with the statute and regulations," per *United States v. Miller*, 318 F.2d 637, 639 (7th, Cir. 1963) quoted with approval in *Brafman v. United States*, 384 F.2d 863, 867 (5th Cir. 1967), I have presented clear and compelling evidence contradicting the presumption of official regularity. The failure to assess in any date shown in the Certificate, mandates that summary judgment be denied the Government.

26 USC §6212 the Secretary or his Delegate

§6212 states:

"If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail ..."

The term "Secretary" is defined at 26 USC §7701(a)(11)(B): "The term 'Secretary' means the Secretary of the Treasury or his delegate." The term "delegate" is defined:

§7701(a)(12)Delegate

(A)In general

“The term ‘or his delegate’—

(i)

when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context.”

Clearly, the Sun Microsystems Computer is not an "officer, employee or agency of the Treasury Department" duly authorized to determine deficiencies. Thus, the SMS computer did not properly issue a notice of deficiency on any date, including July 11, 2006, July 24, 2006, August 29, 2006 and September 11, 2006. Hence, the entire ASFR program is open to legal challenge.

Clean Hands

“Clean hands” is a doctrine based on conscience and good faith. Hoehn v. Crews, 144 F.2d 665, 672 (10th Cir. 1944) aff'd, Garber v. Crews, 324 U.S. 200, 65 S.Ct. 600, 89 L.Ed. 870 (1945). The Supreme Court defined the doctrine thus in Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814, 65 S.Ct. 993, 997, 89 L.Ed. 1381 (1945):

"The guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith."

This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. The Government comes before this Court seeking to use falsified records to justify a forfeiture action. The plaintiff has not come into court with clean hands. Pope Mfg. Company v. Gormully, 144 U.S. 224, 236-237, 12 S.Ct. 632, 36 L.Ed. 414 (1892), Cathcart v. Robinson, 5 Pet. 264, 276, 8 L.Ed. 120 (1831). See National Fire Ins. Co. v. Thompson, 281 U.S. 331, 338, 50 S.Ct. 288, 74 L.Ed. 881 (1930).

If a court of equity finds the plaintiff to be guilty of unfair conduct or any inequitable advantage, it may refuse him remedy. The Government's actions can hardly be described as comporting with the dictates of good faith, fair dealing or conscience.

First, the Government has delegated to its Sun Microsystems Computer authority to determine and send notices of deficiencies, when that Computer is not an officer or employee or agency to whom such authority can be delegated. FAR more importantly, the Government presents a "Certificate" that has been repeatedly falsified. It conceals the fact that IRS used its Sun Microsystems Computer to create the appearance a dummy return was prepared on "08-14-2006," then fraudulently pretended said date was when a 23C or RAC 006 assessment occurred.

It also claims that IRS prepared a 23C or RAC 006 on an Assessment Date of "02-26-2007," when in truth, that was merely when an IRS data entry clerk input the deficiency amounts calculated by the Sun Microsystems Computer. Incredibly, the Government-employed attorneys are now claiming that the mere entry into the IMF database of the alleged "deficiency" amount of 59,485, is, itself, an assessment.

Clearly, the Court should find the Government's hands tainted and, thus, the Court must deny the Government's motion for summary judgment, in favor of setting a trial to give the Government opportunity to prove the validity of its computer-delivered "notices of deficiencies", its falsified Certificates, its falsified IMF records and redacted Account Transcripts, etc. Let's go to trial.

It is so requested and respectfully presented.

Melba Ford