

1/23/19

NO. 18-1583

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In The  
**SUPREME COURT OF THE UNITED STATES**  
                     Term, 2019

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Lewis F. Carter,  
                                Petitioner  
vs.  
United States of America,  
                                Respondent

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**On Petition For Writ of Certiorari  
From the United State Court of Appeals  
For the Fourth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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Lewis F. Carter  
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## QUESTIONS PRESENTED

- A. Can the district court violate the *doctrine of judicial estoppel* by improperly changing in the *Final Order of the Court* the claimed *subject-matter jurisdiction* of the district court taken over the civil action to admit evidence?
- B. Did the district court fatally *lack* a fully specified and disclosed *subject-matter jurisdiction* that could be lawfully taken over the civil action under authority of Article I, Section 8 of the U.S. Constitution, because it refused to fully disclose to the defendant whether the alleged specific jurisdiction claimed thereunder was based in the granted power to tax by *Impost, Duty, or Excise*?
- C. Did the district court fatally err in ordering judgment for the plaintiff, when it relied upon evidence that was made inadmissible *fruit of the poisonous tree* because of the change of *subject-matter jurisdiction*, which completely removed from the record of the action the alleged foundation at law that allowed the introduction of the plaintiff's *assessments* for

a *direct unapportioned* tax onto the record of the action *as* evidence of tax alleged owed by the defendant, in blatant violation of Article I, Section 2, clause 3 and Article I, Section 9, clause 4 of the U.S. Constitution?

- D. Can the *subject-matter jurisdiction* of the district court that was ultimately *taken* over the action in the final *summary judgment Order* under the *indirect* Article I, Section 8, clause 1 taxing authorities invoked, be lawfully used by the district court to enforce the *claims* of the plaintiff's *Complaint* for the compelled payment by the defendant of a *direct* tax on *income*, that is not in the *form* of an *Impost, Duty* or *Excise* tax under Article I, Section 8 ?
- E. Was the district court's *Order* granting *summary judgment* erroneous and should it be vacated or set aside because the *subject-matter jurisdiction* of the district court was never fully disclosed on the record of the action in the court, and to this day remains vague, arbitrary and unspecified within that record, and therefore is still unclear and not fully specified on the record of the action, *i.e.*: what is the specific constitutional *taxing*

*power* alleged as the subject-matter foundation to, and jurisdiction over, this case under the granted Article I, Section 8 *taxing power* invoked in the final *Order of the Court*; - is it based on the enforcement of an *Impost*, a *Duty*, or an *Excise* tax imposed?

- F. Were the defendants denied their constitutional *Right* to legal *due process* in the court by the district court's refusal to allow the defendants to ever appear in the courtroom, or to argue in person in the courtroom, in defense of their property, home, and farm, as the court has repeatedly been *moved* in the pleadings of the defendants to allow, before the properties, working farm and home are sold at auction by the plaintiff?
- G. Under the 7<sup>th</sup> Amendment to the U.S. Constitution (the Supreme Law in the United States of America), the Defendant was entitled by Supreme Law to a trial by jury of the facts and law at issue in this dispute, because *summary judgment* rendered for the plaintiff in this action is not a conclusion that is legally supported by the facts of the dispute, the Complaint, the Constitution, the

authorities invoked, the evidence, or the specific rulings of the court.

- H. There is a serious and irreconcilable *subject-matter jurisdiction* conflict in the U.S. Circuit Courts of Appeals regarding the true *subject-matter jurisdiction* of the federal courts to enforce the claims for personal income tax that are made within civil actions of the nature pursued in this case, against individual American citizens, by the plaintiff United States. It is the constitutional duty of this Supreme Court to settle that irreconcilable fundamental *subject-matter jurisdiction* conflict that exists within and between the various Circuit Courts of Appeals, so that the federal tax law will be harmonized in collection and enforcement operations, and made consistent in its application, operation, enforcement, and prosecution, throughout all of the 50 United States of America and within every district court house and courtroom, and in every single Circuit Court of Appeals in the nation as well.

## LIST OF PARTIES

All parties to the action are listed on the cover of this *Petition*

## CORPORATE DISCLOSURE STATEMENT

Not applicable. No corporate involvement, affiliation, or association with the defendant exists to disclose hereunder.

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## OPINIONS APPEALED

*United States v. Lewis F. Carter* (U.S. Fourth Circuit Court of Appeals, No. 18-1471) an appeal from the *Final Order* of the United States district court of Eastern Virginia, Richmond Division, Number: 3:15-cv-161.

## JURISDICTIONAL STATEMENT

This *Petition for Writ of Certiorari*, filed by a *pro se* Petitioner is filed pursuant to 28 U.S.C. § 1254(1). The *Petition* seeks review of the Fourth Circuit Court of Appeal's *Order* in case No. 18-1471.

## CAUSE FOR THE PETITION

In this *Petition* it is shown that the federal district court *lacked* the required *subject-matter jurisdiction* necessary to rule in the action in the district court, or grant any *summary judgment* for the plaintiff United States without trial by jury, because the Petitioner has proven that the plaintiff failed to author a *Complaint* with a *claim* for tax that the federal courts are constitutionally authorized to enforce under the applicable and authoritative clauses of the U.S. Constitution and the controlling precedents of the U.S. Supreme Court controlling the limits of application of the granted taxing authorities. These controlling authorities have all been erroneously mis-applied by the lower courts, who have wrongfully discounted and

disregarded the misapplication of the constitutional authorities with respect to the FACTS of the case and the specific nature of the *claims* that were made within the fatally *defective Complaint* that was filed in the court by the plaintiff United States.

In this Petition, it is proven that:

- i.) the material facts of the *Complaint*, the applicable constitutional provisions, and the controlling court precedents were all erroneously ignored by the lower courts in this action, and that they do not support the *summary judgment* inexplicably ordered by the district court, for the plaintiff;
- ii.) the *subject-matter jurisdiction* of the court ultimately invoked in the *Final summary judgment Order* under Article I, Section 8, contradicts the facts of the *Complaint* itself, and is in direct conflict with the decision and holding of another U.S. Court of Appeals (the Third Circuit) decision in a current case before that court; and the conflict between the two Circuit Courts has not yet been addressed or *constitutionally* resolved;
- iii.) the case involves the question of exceptional *constitutional* and national importance of determining the true *constitutional nature* of the federal personal income tax, *direct* or *indirect*, and the specific *subject-matter jurisdiction* of the court that may be taken by the courts to enforce the claims for federal personal income tax that are made by the United States as a plaintiff in the courts, *i.e.*: are the tax claims lawfully

enforced by the federal courts as an *indirect* tax - *Impost, Duty* or *Excise* imposed under authority of Article I, Section 8, clause 1 of the U.S. Constitution; OR, or as the measure of said *indirect Impost, Duty* or *Excise* taxation; OR, is it an unapportioned direct tax imposed under authority of the 16<sup>th</sup> Amendment without any *limitation* at all being applicable to the *power to tax income* that is asserted and exercised.

### ISSUE A

Can the district court violate the *doctrine of judicial estoppel* by improperly changing in the *Final Order of the Court* the claimed *subject-matter jurisdiction* of the district court taken over the civil action to admit evidence?

1) It is argued by the defendant that the district court violated the doctrine of *judicial estoppel* when it improperly and *prejudicially* changed the alleged *subject-matter jurisdiction* of the district court over the entire civil action in its final *summary judgment Order* that was issued at the end of the litigation proceedings in the district court.

2) In this action the plaintiff United States came to the district court with a defective *Complaint* erroneously seeking enforcement of claims made within the *Complaint* demanding that the defendant make payment of the *direct unapportioned* tax they claimed to have assessed directly on the *income* of the defendant

under authority of the 16<sup>th</sup> Amendment. The district court agreed and ruled the *subject-matter jurisdiction* of the district court over the entire civil action was “*direct taxation*” authorized under the 16<sup>th</sup> Amendment without limitation.

3) For two years the defendant-appellant-petitioner objected in his pleadings to these *erroneous* court ruling and *claims* of the plaintiff United States, arguing that the federal personal income tax was not authorized under the Constitution, nor ever upheld by the Supreme court as an unlimited *direct* tax or *taxing power* that was created or conferred under the 16<sup>th</sup> Amendment, but was, and still is to this day, authorized only as an *indirect* tax under the pre-existing (before the adoption of the 16<sup>th</sup> Amendment) *indirect* taxing authorities granted under Article I, Section 8, clause 1 of the U.S. Constitution.

4) Under the doctrine of “*judicial estoppel*” a party is bound by its judicial declarations and may not contradict them in a subsequent proceeding involving the same issues and parties. *Sailes v. Jones*, 17 Ariz.App. 593, 499 P.2d 721,726. Under this doctrine, a party like the plaintiff United States in this action, or the district court itself, who by its pleadings, statements, and contentions, under oath, or by *Order of the Court*, has assumed a particular position in a judicial proceeding, is *estopped* to assume an inconsistent or contrary position in a subsequent action. *Yarber v. Pennell*, Tex.Civ.App 443 S.W.2d 382, 384.

5) Under this *doctrine*, the district court itself, having assumed a particular position under an issued *Order of the Court*, on a specific legal issue, is *judicially estopped* to assume an inconsistent position, and is forbidden from reversing its assumed position in order to repeatedly favor one party to the action in its rulings.

6) Of course, the district court has improperly *prejudicially* done just that for the plaintiff United States in this action, because despite essentially declaring that all of the Plaintiff's pleadings arguing for the enforcement by the court of a *direct tax*, as claimed in the *Complaint*, were *erroneous*, the court incredibly *orders summary judgment* for the *plaintiff in error*, based solely on the unauthorized assessments for *direct tax*, even after changing the claimed *subject-matter jurisdiction* of the district court over the entire civil action to "*indirect taxation*" under Article I, Section 8, in the *Final Order of the Court*.

7) In this action, on the record of the action, it is the defendant appellant/petitioner who has argued from the beginning, repeatedly and *consistently*, that the federal income tax is constitutional as a *uniform indirect* tax that is, and always has been, authorized under Article I, Section 8, clause 1 of the U.S. Constitution, and is not constitutionally authorized as a *direct tax* under the 16<sup>th</sup> Amendment without *limitations*.

"by the previous ruling [*Brushaber v Union Pacific R. Co.*] it was settled that the provisions of



the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged ...." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916).

"Excises are "taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges ... *the requirement to pay such taxes involves the exercise of the privilege* and if business is not done in the manner described *no tax is payable...it is the privilege which is the subject of the tax* and not the mere buying, selling or handling of goods. " Cooley, Const. Lim., 7th ed., 680." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 349 (1911) at 151

"The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. *Cf. Burnet v. Brooks*, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union*

*Pacific R. Co.*, 240 U. S. 1, 240 U. S. 12." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581

"The [income] tax being an excise, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. *Knowlton v. Moore*, *supra*, p. 178 U. S. 83; *Flint v. Stone Tracy Co.*, *supra*, p. 220 U. S. 158; *Billings v. United States*, 232 U. S. 261, 232 U. S. 282; *Stellwagen v. Clum*, 245 U. S. 605, 245 U. S. 613; *LaBelle Iron Works v. United States*, 256 U. S. 377, 256 U. S. 392; *Poe v. Seaborn*, 282 U. S. 101, 282 U. S. 117; *Wright v. Vinton Branch Mountain Trust Bank*, 300 U. S. 440." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 583

"Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" (*Pollock v. Farmers' Loan & Trust Co.*, 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble*, 7 Wall. 433, 74 U. S. 445), or a "duty" (*Veazie Bank v. Fenno*, 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore*, 178 U. S. 41, 178 U. S. 46). A *capitation* or other "direct" tax it certainly is not." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived' without apportionment among the several states,

and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power. Congress already had power to tax all incomes. But taxes on incomes from some sources had been held to be 'direct taxes' within the meaning of the constitutional requirement as to apportionment. Art. 1, 2, cl. 3, 9, cl. 4; *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 15 S. Ct. 912." *Bowers v. Kerbaugh-Empire Co.*, 271 US 170 (1926) at 173-174

8) The district court plainly and clearly erred in allowing evidence in the form of I.R.S. assessments for a direct tax on *income* that does not actually *constitutionally* exist, to be entered onto the record of the action and used as evidence against the defendants of an indirect tax debt never actually claimed owed by the plaintiff, because it only made an assessment for, and demanded the payment of, a *direct* tax without application of any underlying indirect *power* to tax by *Impost, Duty* or *Excise*, for lack of subjectivity of the defendant/appellant/petitioner, and his life's activities, to any *indirect* form of taxation (by *Impost, Duty* or *Excise*) as historically defined by the constitutional precedents of this Supreme Court. The plaintiff's entire *Complaint* is *constitutionally* absurd.

9) It was further erroneous for the district court to enforce any *indirect* taxing *power*, through the enforcement by the court of an assessment made by the plaintiff for only a non-existent direct tax on the *income*

of the defendant, as *erroneously* and improperly argued in the plaintiff's *Complaint*.

10) In the final *summary judgment Order* the district court invoked and claimed a *subject-matter jurisdiction* that was completely and entirely different from the original *subject-matter jurisdiction* claim that was made by the court in allowing the plaintiff to originally proceed in the action with the entering of the alleged evidence (against the defendants) onto the record of the action, to create the entire evidentiary record that exists against the defendants in this case.

11) By that improper last-minute change of the court's alleged *subject-matter jurisdiction* over the civil action, all of the evidence against the defendants, previously placed on the record of the action, was rendered *fruit of the poisonous tree* because the change of *subject-matter jurisdiction* stripped the evidence of its *relevance* to an enforceable claim under the *subject-matter jurisdiction* of the court ultimately *taken* by the court under Article I, Section 8. In making this improper, last minute change of the alleged *subject-matter jurisdiction* of the court, that was ultimately invoked by the court as its legal authority to act in the action, the court rejected the alleged *subject-matter jurisdiction* foundation on which the plaintiff's claims were made, and upon which the evidence had previously been based, and had been allowed to be introduced and admitted onto the record of the action *as* "the evidence" against the defendants.

12) This rejection by the district court, of that previously alleged basis for the jurisdiction of the court and the original admission of the evidence onto the record of the court, rendered the alleged evidence *inadmissible* as “evidence” in the action, because at that point in time (after the change of *subject-matter jurisdiction*) it constituted “*fruit of the poisonous tree*” (under the newly taken *subject-matter jurisdiction* of the court), because the new claim of the court to jurisdiction over the action, rejected the previously claimed basis that was used to engineer the admission of the evidence. Thus, all of the plaintiff’s evidence against the defendant in the case was rendered “*fruit of the poisonous tree*” by the complete change of the alleged *subject-matter jurisdiction* of the court over the civil action, and the evidence’s lack of relevance and applicability under the jurisdiction of the court ultimately taken.

13) That “*fruit of the poisonous tree*”, in the form of the disputed I.R.S. *assessments* for a *direct* tax on *income*, that were wrongfully made against the defendant in order to attempt to collect an *unapportioned* “*direct tax*” on *income* from him under a rejected and erroneously claimed authority to tax *directly*, was the only evidence that existed in the action against the defendants. When it is removed from the record, there is no evidence left to support the plaintiff’s original claims for the payment of a direct tax, and the action must be dismissed with prejudice.

14) Those "*direct tax*" assessments were *erroneously* argued by the plaintiff in its *Complaint* and pleadings in this action to be based on a newly created authority of the United States to tax *income* under the 16<sup>th</sup> Amendment *directly* and without any applicable limitation or constraint. That claimed authority was initially embraced, but ultimately rejected by the district court, but it never-the-less *wrongfully* used those improper assessments for *direct tax* as the evidence against the defendants of an *indirect tax* that was never alleged by the plaintiff to be owed by the defendant, to inexplicably order *summary judgment* for the plaintiff and against the defendant. This was reversible error as the district and circuit courts appear to be *inventing* their own form of *progressive federal taxation of income*, by the whims and musings of the court alone.

15) ALL of the alleged evidence against the defendants that was placed on the record of the action in the court, was rendered *fruit of the poisonous tree* by the court's improper changing of the claimed *subject-matter jurisdiction* of the court in the *Final Order of the Court*, improperly violating the doctrine of *judicial estoppel*. Reversible fatal error appears at every step, and in every stage, of the entire civil action in this case, in both of the lower courts.

## ISSUE B

Did the district court fatally *lack* a fully specified and disclosed *subject-matter jurisdiction* that could be lawfully taken over the civil action under authority of Article I, Section 8 of the U.S. Constitution, because it refused to fully disclose to the defendant whether the alleged specific jurisdiction claimed thereunder was based in the granted power to tax by *Impost, Duty, or Excise*?

16) In the *summary judgment Order* of the district court in this action, the court improperly changed the claimed *subject-matter jurisdiction* of the court over the entire action, in a blatant violation of the doctrine of *judicial estoppel*, to an entirely different claim of *subject-matter jurisdiction* than what had been asserted by the court before final the final *Order*, during the preliminary and evidentiary stages of the litigation in the court.

17) The district court changed the claimed *subject-matter jurisdiction* of the court from a claim to authority that was initially alleged to have been granted under the 16<sup>th</sup> Amendment to tax *directly, i.e. - to tax income directly* and without *apportionment* or *proportionate imposition* of the tax under the 16<sup>th</sup> Amendment, which claim was changed by the court in the final *Order* to a claim of legal authority and a granted *subject-matter jurisdiction* of the court that is taken under the Article I,

Section 8 *powers* to tax *indirectly*, by *Impost*, *Duty*, and *Excise*.

Moreover in addition the conclusion reached in the *Pollock* case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it." *Brushaber v. Union Pacific R.R. Co.*, 240 US 1 (1916) at 16-17

18) However, without a complete and specific identification by the court of the specific *taxing power* invoked by the court as its *subject-matter jurisdiction* that can be taken over the action, under the three different *powers* to tax that are granted by Article I, Section 8, *i.e.*: the power to tax by either *Impost*, *Duty*, or *Excise*, then it is legally impossible to factually positively identify the actual *subject-matter jurisdiction* of the court that has been invoked and is relied upon by the court to *order judgment* in the action for the enforcement of "*any tax*".



19) Thus judgment was improper and is void, and must be set aside or vacated because the lower courts lack a proper declaration on the record of the action in the court, of the specific *subject-matter jurisdiction* of the court that can be taken over the action because the courts steadfastly refused to this day to identify the specific taxing power granted under Article I, Section 8, clause 1, that is allegedly invoked by the court as the constitutional foundation to both the *subject-matter jurisdiction* of the court, and the *claims* of the plaintiff that are made for the enforced payment by the court of the *direct tax on income* that is demanded of the defendants in the plaintiff's defective *Complaint*.

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." *United States v. Cotton*, 535 U.S. 625, 630 (2002); *Accord Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger*, 125 Ohio.App.3d 456. (1995) ("If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*."): *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006) ('[D]enying a motion to vacate a void judgment is a per se abuse of discretion.').

20) If a defendant in the federal courts is never correctly told the specific, single *subject-matter*

*jurisdiction* of the court that has been taken over the *claims* of the *Complaint* filed in the action against him by the plaintiff, then the court may not lawfully act or proceed in the litigation. In this case, the court is therefore still barred from issuing *orders*, since neither the plaintiff nor any federal court in the action has ever told the defendants, on the record of the action in the court, *which* specific taxing power under Article I, Section 8 has been invoked as the fully-identified taxing *power* that serves to establish the alleged *subject-matter jurisdiction* of the court to enforce the *direct* taxation of *income* claimed to be owed by the defendant in the *Complaint*, *i.e.*: is it an *Impost*, *Duty*, or *Excise* tax under Article I, Section 8 that is alleged by the court to be serving as the constitutional foundation for the claimed *subject-matter jurisdiction* of the court over the civil action to enforce the *direct* tax on *income* demanded of the defendant by the plaintiff in its *Complaint*?

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal."  
*Williamson v. Berry*, 8 HOW. 945, 540 12 L.Ed. 1170, 1189 (1850).

21) The plaintiff erroneously argued for the enforcement upon the defendants of an *unapportioned direct tax* in its *Complaint*. These *claims* are beyond the authority of the federal courts to enforce upon individual

American citizens under constitutionally authorized *taxing powers*, regardless of the adoption of the 16<sup>th</sup> Amendment.

"[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it .... To the extent that such action is not taken, the power lies dormant." *The Mayor v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851 (1868); accord, *Christianson v. Colt Industries Operating Co.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 2179, 100 L.Ed.2d 811 (1988); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-380, 101 S.Ct. 669, 676-677, 66 L.Ed.2d 571 (1981); *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-234, 43 S.Ct. 79, 82-83, 67 L.Ed. 226 (1922); *Case of the Sewing Machine Companies*, 18 Wall. 553, 577-578, 586-587, 21 L.Ed. 914 (1874); *Sheldon v. Sill*, 8 How. 441, 449, 12 L.Ed. 1147 (1850); *Cary v. Curtis*, 3 How. 236, 245, 11 L.Ed. 576 (1845); *McIntire v. Wood*, 7 Cranch 504, 506, 3 L.Ed. 420 (1813). *Finley v. United States*, 490 U.S. 545 (1989).

22) Precise specification of the specific, single, *taxing power* granted under Article I, Section 8, that is brought to bear against a defendant in the federal courtroom under a *Complaint* seeking enforcement of tax *claims*, must be completely and fully made and specified by the plaintiff United States (or the court itself), or the

*subject-matter jurisdiction* of the court over the entire action cannot be properly legally established on the record of the action as required by law and Rule, and the *claims* of the plaintiff's *Complaint* must therefore fail on their face for failure to state a *claim* upon which the court may grant relief, lacking a specific applicable identifiable *subject-matter jurisdiction* of the court that may be taken by the court over the civil action. The federal courts cannot grant relief to, or compel performance under, any such claim demanding the compelled payment of a "direct" *income* tax assessment by an American citizen, based on a claimed, but unenforceable, *power* under the 16<sup>th</sup> Amendment to tax *directly* and without any applicable limitations at all on the taxing power, like *apportionment*, *proportionate imposition*, or *uniformity* of the tax.

23) When the district court rejected the claims of the plaintiff in the final *summary judgment Order*, to a *subject-matter jurisdiction* to tax *directly* under the 16<sup>th</sup> Amendment, as alleged and argued by the plaintiff in its *Complaint*, that rejection alone defeated the plaintiff's claims in the court, and should have then caused the court to *dismiss* the claims with prejudice, because the plaintiff's *operational* assessments of a *direct* tax (submitted as alleged evidence against the defendant), cannot be lawfully enforced under the court's holding that the tax is actually an *indirect tax*.

24) The *Order* of the court that rejected the *direct* taxation jurisdictional claim of the plaintiff, has the

legal effect of destroying the district court's ability to lawfully enforce the *claim* for the payment of the *direct* tax on *income* that was argued in, and pursued for enforcement by, the plaintiff's original *Complaint*.

25) Therefore the judgment of the district court is void and should be vacated and or set aside, as the lower federal courts, and this Supreme Court as well, lack the *subject-matter jurisdiction* necessary under the Constitution to enforce the payment of an unapportioned *direct* tax upon the *income* of the individual American citizens of the United States of America under the 16<sup>th</sup> Amendment for lack of any *enabling enforcement clause* in the Amendment, which *enabling power* is essential to properly and completely establishing the fully-granted *subject-matter jurisdiction* of the court that can be lawfully taken by the court over the civil enforcement action.

26) Without a fully specified *subject-matter jurisdiction* of the district court that is shown on the record of the action in the court, down to the specific (and single) taxing power alleged exercised, - then the full disclosure of the required *subject-matter jurisdiction* of the court over the action has NOT been made, is absent from the record of the action in the court; - and this *fatal defect* in the *subject-matter jurisdiction* of the court, makes it impossible for the district court to have issued any lawful *judgment*, or even an *Order of the Court* other than dismissal, in this case.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.*, 505 F.2d 1026

### ISSUE C

Did the district court fatally err in ordering judgment for the plaintiff, when it relied upon evidence that was made inadmissible *fruit of the poisonous tree* because of the change of *subject-matter jurisdiction*, which had the legal effect of completely removing from the record of the action the alleged legal foundation necessary to allow the introduction of the plaintiff's *assessments* for a *direct unapportioned* tax onto the record of the action as evidence of tax owed by the defendant, in violation of Article I, Section 2, clause 3 and Article I, Section 9, clause 4 of the U.S. Constitution?

27) Assessments for a tax on *income* that are made as assessments for a *direct* tax, and which are without legal foundation grounded in any application of the *indirect* taxing powers, are erroneously alleged by the I.R.S. to be permitted (and owed) under the 16<sup>th</sup> Amendment, and are not actually lawfully enforceable in the federal courts under that Amendment, nor are they admissible as evidence of any *indirect* tax imposed under the Article I, Section 8 taxing powers that are granted. This is a fatally defective, chaotic, anarchical, erroneous misapplication of the facts, the law, and the limited taxing *powers* actually granted by the

Constitution, which were not changed by the adoption of the 16<sup>th</sup> Amendment.

28) The record of evidence in this case was irreparably and *prejudicially* corrupted by the improper and after-the-fact *alteration* of the claimed *subject-matter jurisdiction* of the court under which the evidence was originally allowed to be entered, when the evidence was not removed from the record of the action, when the underlying jurisdiction of the court under which it had been deemed relevant admissible evidence was ultimately rejected by the court and removed from applicability to the civil action by the court's rejection of the alleged "*direct*" authority, and changed the claimed *subject-matter jurisdiction* of the court to *indirect taxation*.

29) Thus all the evidence of all the tax alleged owed in the defendant's name in this action, was *fraudulently* entered onto the record of the action against the defendant, because it was all allowed to remain on the record as evidence after it had been rendered entirely *irrelevant* and *inadmissible as* evidence by the district court's ultimate rejection of the claimed evidentiary foundation for the evidence, and its change of the claimed *subject-matter jurisdiction* of the court taken over the action that was made in the court's *Final summary judgment Order*.

30) The evidence against the defendant had specifically been allowed to be entered onto the record of

the action under the previously alleged claims of a “*direct tax*” *subject-matter jurisdiction*. The district court rejected that *claim* in its *Final summary judgment Order*, where it adopted *indirect* taxation as the *subject-matter jurisdiction* of the court *taken over* the civil action.

31) After that holding, the evidence should have been subsequently *stricken* from the record as *inadmissible fruit of the poisonous tree*, as it was unlawfully created as evidence *only* through the improper assessment of an unenforceable *direct tax* on *income without apportionment* (or any other *limitation*), that does not exist in law nor is granted by the Constitution as a lawful, enforceable taxing power, as proved by the district court’s ultimate rejection of that authority (knowing it was erroneous) and the change of its claim to a granted *subject-matter jurisdiction* of the court under Article I, Section 8, clauses 1 and 18 to enforce on individuals the assessments properly made for *indirect* taxes, but NOT “*direct*” taxes, which are paid by the states under the *apportionment clause* of Article I, Section 2, clause 3 of the Constitution.

32) The summary judgment was wrongfully granted by the district court because it changed its claimed *subject-matter jurisdiction* over the action in its *Final (summary judgment) Order*. It was improperly *changed* from an unenforceable claim of authority to tax income *directly* and without *apportionment* under the 16<sup>th</sup> Amendment, which claim - all the evidence against the



defendant in the case was based on; - to an inapplicable and irrelevant claim (with respect to the defendants) of a jurisdictional authority to enforce assessments made for the payment of *indirect taxes*, which *indirect Impost, Duty, or Excise* taxes, were NEVER assessed in this case against any defendant, to properly serve as *evidence* in the case of any *indirect* tax actually owed by the defendants to enforce, because there is no supporting evidence on the record of the action of any *assessment* against the defendant that has ever lawfully and properly been made by the plaintiff United States for any *indirect Impost, Duty, or Excise* tax, as the courts refuse to even identify which of the *Impost, Duty, or Excise* taxing powers is allegedly at work in the civil action, is serving as the *subject-matter jurisdiction* of the court to enforce *claims* for tax laid upon the defendants, and which is pursued for enforcement by the specific *claims* for tax that were made in the plaintiff's *defective Complaint*.

33) For all of these reasons, it simply is not possible for there to be no reversible error in this case record, where the trial court improperly and *prejudicially* changed its declared *subject-matter jurisdiction* of the court *taken over* the action, during the litigation, between the *evidentiary* and *judgment* phases of the trial, to deny the defendant a trial by jury by improperly, inexplicably, granting a *summary judgment* for the plaintiff in error. Either there is clear *error* in the initial claim of a *subject-matter jurisdiction* of the court claimed by the plaintiff over the enforcement of

“*direct taxation*”, upon which all of the *relevance* and *admissibility* of the alleged evidence against the defendants was allegedly based, OR there is an *error* made in the judgment *Order* that improperly changed the declared *subject-matter jurisdiction* of the court in the *Final Order* granting *summary judgment* for the plaintiff United States while factually stripping the evidence of its alleged *relevance* and *admissibility* as evidence supporting the specific *claims* of the plaintiff made in its defective *Complaint* (for the payment of a *direct tax on income*).

34) Both holdings by the district court, alleging two entirely different *subject-matter jurisdictions* of the district court over the same action, cannot both be *error free* when they both have been made in the same case. Only one can lawfully apply and be correct. At least one of the two rulings must be *reversible error*, as one [*indirect taxation*] relies on *fruit of the poisonous tree* as evidence [assessments for the rejected *direct taxation*], and the other [*direct taxation*] is constitutionally twice prohibited from being enforced upon individual American citizens under multiple Article I provisions<sup>1</sup> of the U.S. Constitution, and is never made *enforceable* in law against the citizens by an applicable *enabling enforcement clause* of the U.S. Constitution or any Amendment (16<sup>th</sup>), that would properly constitutionally authorize the U.S. Congress to write any new tax law thereunder.

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<sup>1</sup> Article I, Section 2, clause 3 and Article I, Section 9, clause 4

## ISSUE D

Can the *subject-matter jurisdiction* of the district court that was ultimately *taken* over the action in the final *summary judgment Order* under the *indirect* Article I, Section 8, clause 1 taxing authorities invoked, be lawfully used by the district court to enforce the *claims* of the plaintiff's *Complaint* for the compelled payment by the defendant of a *direct* tax on *income*, that is not in the *form* of an *Impost, Duty* or *Excise* tax under Article I, Section 8 ?

35) Under the controlling decision in *McCulloch v. State of Maryland*, 17 U.S. 316 (1819), the 16th Amendment cannot lawfully be used by the federal courts to enforce a constitutionally prohibited *power* or tax, as the plaintiff United States seeks with its *Complaint* to enforce *erroneous* assessments of only a *direct* tax on *income*, without any identifiable *indirect* constitutional basis, instead of applying an applicable, Article I, Section 8, *indirect* taxing power (*Impost, Duty* or *Excise*) to any *taxable* activity of the defendants, to make the assessments of tax on *income* claimed owed.

"...We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties

assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional ..." *McCulloch v. State of Maryland*, 17 U.S. 316 (1819)<sup>(6)</sup>

36) The assessments made by the plaintiff United States' IRS under alleged authority of the 16<sup>th</sup> Amendment for a *direct tax* on *income*, alleged as the only evidence against the defendants in the case, are rendered *poisonous fruit* by the district court's final ruling that the federal personal *income tax* is constitutionally authorized only as an *indirect* tax under Article I, Section 8, and not as the *direct* tax demanded by the plaintiff in its *Complaint*. The district court, and this circuit court both inexplicably ignore the fundamental factual disconnect that is occurring between the granted constitutional authority to act lawfully under Article I authorities to enforce the *indirect* taxation authorized thereunder, and the unlawful factual acts actually undertaken by the plaintiff to tax the *income* of the defendants *directly*, as a function only of its existence, and not *indirectly* as a function of its subjectivity to some *Impost*, *Duty* or *Excise* tax. And, without regard for the twice enumerated, articulated, unremoved constitutional

*limitations* that are still imposed on all *direct* taxation by Article I<sup>2</sup>.

37) The plaintiff United States still argues AGAINST the decision taken by the district court, refusing to accept the holding of the court that the *subject-matter jurisdiction* of the court that can be taken by the court over the action is taken under the Article I, Section 8 taxing powers, and not the 16<sup>th</sup> Amendment.

38) The plaintiff obviously refuses to accept this ruling of the court, specifically made in this case by the court, because the ruling completely destroys the *claims* made in the plaintiff's defective *Complaint* that any constitutional tax has actually been identified in or by the *Complaint*, as being legitimately owed by the defendants.

39) The correct final ruling of the district court in this case, that the federal personal *income* tax is constitutional as an *indirect tax* under Article I, Section 8, has the immediate legal effect of leaving the *claims* of the plaintiff's *Complaint* widowed from, and stripped bare of, all constitutional support, because those claims wrongfully and erroneously demand the payment of a *direct* tax that was wrongfully assessed in *operational practice* by the plaintiff United States' I.R.S. as a direct tax on *income* under the 16<sup>th</sup> Amendment.

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<sup>2</sup> Again, Article I, Section 2, clause 3 and Article I, Section 9, clause 4

40) The claims of the plaintiff are thus destroyed because that alleged "*direct*" *taxing power* was REJECTED by the court in its *Final Order* that inexplicably granted *summary judgment* to a plaintiff in *error*, by a court that lacked *subject-matter jurisdiction* over the plaintiff's claims *as argued*, because of the argued constitutional nature of them, which the court rejected in its *Order*. The *indirect* taxation *ruling* of the district court destroys the courts' legal ability to lawfully enforce the "*direct*" taxation *claims*, sought for enforcement by the plaintiff's *Complaint*.

41) The defendant has absolutely proved that there was a complete *lack* of a constitutionally granted *subject-matter jurisdiction* of the district court over the plaintiff's *claims* seeking the compelled payment of a *direct* tax on the *income* of the defendant, as argued in the plaintiff's *Complaint*, specifically because of the court's rulings made in this case specifying the true nature of the *subject-matter jurisdiction* of the court that was ultimately *taken* over the action to enforce *indirect* taxation (as ultimately stated in the *Order* of the district court granting *summary judgment* for the plaintiff in error).

42) The declared *subject-matter jurisdiction* of the court taken, is legally insufficient to allow the district court to enforce the *claims* of the plaintiff for the payment of a *direct* tax, as they were specifically argued in its original *Complaint* (*i.e.*: for the payment of a *direct* tax), because the plaintiff erroneously argued for the

enforcement of assessments that were improperly made by the plaintiff's IRS in *operational practice* as assessments of a *direct, unapportioned* tax on the *income* of the defendant-appellant-petitioner, under *erroneously* alleged authority of the 16<sup>th</sup> Amendment alone; - when the district court specifically rejected that *erroneously alleged* basis in its *summary judgment Order* and clearly ruled correctly that the income tax has historically been upheld as an *indirect* tax under the pre-existing Article I, Section 8, clause 1 taxing authorities and *powers; i.e.:* the power to tax by *Impost, Duty* and *Excise*; which is not applicable to the *direct* tax for which enforcement was erroneously sought by the plaintiff United States in its defective *Complaint* in this action.

#### ISSUE E

Was the district court's *Order* granting *summary judgment* erroneous and should it be vacated or set aside because the *subject-matter jurisdiction* of the district court was never fully disclosed on the record of the action in the court, and to this day remains vague, arbitrary and unspecified within that record, and therefore is still unclear and not fully specified on the record of the action, *i.e.:* what is the specific constitutional *taxing power* alleged as the subject-matter foundation to, and jurisdiction over, this case under the granted Article I, Section 8 *taxing power* invoked in the final *Order of the Court* - is it based on

the enforcement of an *Impost*, a *Duty*, or an *Excise* tax imposed?

43) The district court *lacks* a proof on the record of the action, of a fully granted, specific, *subject-matter jurisdiction* that can be taken by the court over the *claims* of the *Complaint*, under the Article I, Section 8 taxing *powers* ruled foundational to the *subject-matter jurisdiction* of the court *taken* over the civil action, for lack of any *statutory* subjectivity of the defendant-appellant-petitioner to any applicable underlying *Impost Duty* or *Excise* tax that is imposed on any of the economic activity that he conducted in any of the tax years in which the enforcement of the payment of tax is pursued by the *Complaint*.

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America*, 511 US 375 (1994)

44) The district court LACKS *subject-matter jurisdiction* over the *claims as argued* by the plaintiff in its *Complaint* under statutes alone.

So, we conclude, as we did in the prior case, that, although these suits may sometimes so present



questions arising under the Constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the federal courts. *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

45) Every federal appellate court has a special obligation to satisfy itself of its own jurisdiction. *Steel Co. v. Citizens For A Better Environment*, 523 U.S. 83 at 94-95.

The Supreme Court has repeatedly told the federal judiciary it may not rely on a conclusive presumption to find against a defendant on an essential element of a cause of action. See *Sandstrom v. Montana*, 442 U.S. 510, 521-523, 99 S.Ct. 2450, 2458-2459 (1979); *Stanley v. Illinois*, 405 U.S. 645, 654-657, 92 S.Ct. 1208, 1214-1216 (1972); *Heiner v. Donnan*, 285 U.S. 312, 325-29, 52 S.Ct. 358, 360-362 (1932); *Schlesinger v. State of Wisconsin*, 270 U.S. 230, 46 S.Ct. 260 (1926); *Tot v. United States*, 319 U.S. 463, 468-69, 63 S.Ct. 1241, 1245-1246 (1943); *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 2233 (1973); *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19, 119 S.Ct. 1961, 1977 (1999), and *Jones v. Bolles*, 76 U.S. 364, 368 (1869).

46) Petitioner seeks a *remand* from this court, to prevent an *ultra vires* act of unlawful *taking* of private

property from the Defendants by the district court, from occurring under the lower district court's erroneous *Orders*, because the district court improperly and violatively changed its alleged *subject-matter jurisdiction* over the civil action at the last minute, in its' final *summary judgment Order of the Court*.

47) The *subject-matter jurisdiction* of the court is in fact lacking under the Article I *subject-matter* authorities that were ultimately invoked by the district court as the basis for its claimed *subject-matter jurisdiction* over the action, because the enforcement of claims sought by the plaintiff in its *Complaint*, for the payment of the alleged assessments that were made by the IRS for a *direct* and *unapportioned* tax on *income* under the 16<sup>th</sup> Amendment, are not supported by the *subject-matter jurisdiction* that was ultimately declared *taken* by the court over the civil action, under the Article I, Section 8, clause 1, *indirect* taxing powers, which were improperly, incompletely invoked by the district court in a *prejudicially* vague, arbitrary, and capricious manner because the *invocation* of the new *jurisdictional* authority lacks the necessary single specification of whether it is the *Impost, Duty, or Excise* taxing power granted thereunder, that is *specifically* invoked by the court as its *subject-matter jurisdiction* to enforce *claims* for tax under constitutionally authorized law.

It remains rudimentary law that "[a]s regards all courts of the United States inferior to this

tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it ....* To the extent that such action is not taken, the power lies dormant." *The Mayor v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851 (1868); accord, *Christianson v. Colt Industries Operating Co.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 2179, 100 L.Ed.2d 811 (1988); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-380, 101 S.Ct. 669, 676-677, 66 L.Ed.2d 571 (1981); *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-234, 43 S.Ct. 79, 82-83, 67 L.Ed. 226 (1922); *Case of the Sewing Machine Companies*, 18 Wall. 553, 577-578, 586-587, 21 L.Ed. 914 (1874); *Sheldon v. Sill*, 8 How. 441, 449, 12 L.Ed. 1147 (1850); *Cary v. Curtis*, 3 How. 236, 245, 11 L.Ed. 576 (1845); *McIntire v. Wood*, 7 Cranch 504, 506, 3 L.Ed. 420 (1813). *Finley v. United States*, 490 U.S. 545 (1989).

48) The district court has lost *subject-matter jurisdiction* over this civil action by virtue of its' changing its claim of jurisdiction to one that does not support the claims made in the plaintiff's Complaint for a specific type of tax (*direct*), and is a different claim to *subject-matter jurisdiction* (indirect) than originally claimed, identified, and invoked to allow the plaintiff to introduce assessments of a *direct tax on income* in order to build an *preponderance of evidence* on the evidentiary record of the action, against the defendants, to utilize in granting *summary judgment* for a plaintiff-in-error.

49) The district court lost *subject-matter jurisdiction* over the *claims* of the plaintiff's *Complaint*, specifically because of the district court's ruling in the *Final summary judgment Order* (wrongfully and *erroneously* granting *summary judgment* to a "*plaintiff in error*"), that the federal personal *income* tax is *constitutionally* authorized as an *indirect* tax under Article I, Section 8, clause 1 of the U.S. Constitution (exactly as argued by the defendant/appellant/petitioner for four years), and not as the *direct* tax under the 16<sup>th</sup> Amendment, as *erroneously* argued by the plaintiff in its defective *Complaint*, and as *incorrectly* and *improperly* relied upon by the United States in its *Complaint*, and in the court in building its alleged evidentiary record in the action against the defendants.

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

50) This loss of *subject-matter jurisdiction* was effected by the district court's own Orders, which properly declared Article I, Section 8 the source of the *income* taxing power that is *enforceable* in the court, while *erroneously* inexplicably granting *summary judgment* for the *direct* taxes *claimed* owed in the plaintiff's *Complaint*, using nothing but the prohibited "*fruit of the poisonous tree*" in the form of assessments for a *direct tax* on *income*, to grant the judgment. No legitimate evidence of *any* tax that the federal courts are *constitutionally* authorized to enforce under Article I, Section 8, exists in this case, which is of course why the district court originally accepted the plaintiff's flawed and defective claim of a *subject-matter jurisdiction* of the court that could be allegedly *taken* over the action to enforce the *direct unapportioned* tax on *income* that was demanded in the plaintiff's *Complaint* and assessed by the I.R.S. in its *defacto* operational practice.

51) The facts of this dispute are really quite simple. The fatal errors of the *Complaint* are obvious and irrefutable, and the *prejudicial, vague, arbitrary, erroneous* rulings of the *district court* are just as obvious. The failure of the district court to apply the consequences of its own *Orders* to the facts of the record of the case as actually argued by the plaintiff in its *Complaint* and pleadings in the court is *inexplicable*, and is extremely *prejudicial* to the defendants, whose arguments for the entire case, the district court has *affirmed* in its *summary judgment Order* even while

inexplicably *prejudicially* granting judgment for the plaintiff.

52) The use by the district court of the "*fruit of the poisonous tree*" as the only alleged evidence operating against the defendants on the record in the case, is improper, *prejudicial, reversible error*, and the courts' unexplained decisions are not sustainable upon honest review.

53) The lack of identification of a specific and fixed *subject-matter jurisdiction* of the court that can be lawfully taken by the court over the enforcement action is fatal to the court's authority to enforce the *claims* of the plaintiff's *Complaint*, and a *vaguely alleged* subject-matter jurisdiction under the multiple possibilities that are granted and exist under the Article I, Section 8 taxing *powers*, is an improper, *vague, arbitrary, and capricious* claim to a *subject-matter jurisdiction* by the court, and as such is both improper, *defective*, and *insufficient* to properly establish and disclose to the defendants the specific *subject-matter jurisdiction* of district court that is alleged applicable and has been taken over the civil enforcement action; - and thus plainly constitutes *prejudicial reversible error*.

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in *subject-matter jurisdiction* require correction regardless of whether the error was raised in district court." *United States v. Cotton*, 535 U.S.

625, 630 (2002); *Accord Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger*, 125 Ohio.App.3d 456. (1995) ("If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*."): *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006) ("[D]enying a motion to vacate a void judgment is a *per se* abuse of discretion.").

54) The improper changing by the district court, of the claimed *subject-matter jurisdiction* alleged *taken* by the court over the enforcement action, between the *evidentiary stage* of the proceedings [where a *direct unapportioned* tax on *income* is alleged under the 16<sup>th</sup> Amendment as the *subject-matter jurisdiction* of the court *taken*], and the district court's *summary judgment Order* [where the *indirect* taxation of *income* under Article I, Section 8, cause 1 is finally *vaguely* proclaimed (admitted) by the court (without the required specificity of identification) to actually be the authority invoked by the court (ultimately), as the constitutional basis for the *subject-matter jurisdiction* claimed *taken* by the court over the entire civil action.

55) This last-minute change of the claim of the *subject-matter jurisdiction* taken by the court over the enforcement action, blatantly violates the legal doctrine of *judicial estoppel*, where a court or jurist is prohibited by Rule and constitutional *due process* from changing their declared position on a legal issue between causes

of action, or within a single cause of action, from a previous declaration that has been made in the case, or previous case, on the same legal issue, where the previous ruling was both different, determinative and conclusive, concerning that same legal issue.

56) Of course, the district court has wrongfully done just that, by improperly changing, during the litigation in the district court, its claim to a granted *subject-matter jurisdiction* of the court that can be lawfully taken over the civil action, without ever *specifically* identifying exactly which *taxing power* it was claiming as applicable, for irrefutable *lack* of the required identification of the specific *taxing power* under Article I invoked, *i.e.*: of either the *Impost*, *Duty* or *Excise* taxing powers authorized under the Article I, Section 8, cl. 1 provisions.

57) The district court was required by law to specify just ONE of the three *taxing powers* granted under Article I, Section 8 as being applicable to the action, in order to properly and fully identify the specific *subject-matter jurisdiction* of the court invoked and *taken* over the entire civil action under the Article I, Section 8 authority claimed by the court in its *summary judgment Order* to be the constitutional basis for the *subject-matter jurisdiction* of the court that could be lawfully taken over the *claims* made in the action. The court failed the duty to be specific and clear. In order for the court to be properly authorized *at Law* to grant



*summary judgment* for the plaintiff, performance at aw was required of the court.

"However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them;" *State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, 718 (1838)

#### ISSUE F

Were the defendants denied their constitutional *Right* to legal *due process* in the court by the district court's refusal to allow the defendants to ever appear in the courtroom, or to argue in person in the courtroom, in defense of their property, home, and farm, as the court has repeatedly been *moved* in the pleadings of the defendants to allow, before the properties, working farm and home are sold at auction by the plaintiff?

58) The defendants have been denied their constitutional *Right* to legal *due process* in the court in this action because the district court has refused for over four years to allow the defendants to appear in *person* in the courtroom in this action, to argue on the record of the court, in defense of their property, family home and

farm. The district court has repeatedly been *moved* by the defendants in their pleadings to allow the defendants to appear in the court to argue on the record of the action, before their properties, their working farm, and their home, are all taken and sold at auction by the plaintiff United States, without the defendant American citizens ever being allowed to appear in the courtroom to argue the *subject-matter jurisdiction* problems and improprieties, before their property is liquidated and sold at auction.

59) *Due process* in the American courts has historically required that defendants be allowed to be present, and also be allowed to meaningfully appear at least once in the U.S. courts to argue on the record of the court, before their property is *taken* and or their constitutional *rights* are diminished by judicial act.

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law." Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims proscribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution - that is, by the law of its creation - to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 US 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal that pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact, or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to

hear and determine the case. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 190. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U.S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else "due process" means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary pg. 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

This is no new principle of constitutional law. The right to a prior hearing has long been recognized

by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, and "depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut*, 401 U.S. 371, 378, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. *E. g.*, *Bell v. Burson*, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S., at 551; *Mullane v. Central Hanover Tr. Co.*, *supra*, at 313; *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153; *United States v. Illinois Central R. Co.*, 291 U.S. 457, 463; *Londoner v. City & County of Denver*, 210 U.S. 373, 385-386. See *In re Ruffalo*, 390 U.S. 544, 550-551. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest ...

### ISSUE G

Under the 7<sup>th</sup> Amendment to the U.S. Constitution (the Supreme Law in the United States of America), the Defendant was entitled by Supreme Law to a trial by jury of the facts and law at issue in this dispute, because *summary judgment* rendered for the plaintiff in this

action is not a conclusion that is legally supported by the facts of the dispute, the Complaint, the Constitution, the authorities invoked, the evidence, or the specific rulings of the court.

60) In the United States of America defendants in civil trials are constitutionally entitled under the 7<sup>th</sup> Amendment to the Bill of Rights, to a trial by jury where asserted in the manner proscribed by, and as allowed under, the Federal Rules of Civil Procedure, and, where the alleged facts of the dispute are still in dispute.

61) The Founding Fathers and Framers of the Constitution fully intended to preserve the right to a trial by jury as it existed in England<sup>3</sup> as a check on potential abuse of power by the new United States government<sup>4</sup>. John Adams explains.

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<sup>3</sup> E.g., Ratification of the Constitution by the State of New York, July 26, 1788, reprinted in 2 Documentary History of the Constitution of the United States of America 193 (United States Dept. of State, 1894) ("That the trial by Jury in the extent that it obtains by the Common Law of England is one of the greatest securities to the rights of a free People, and ought to remain inviolate [emphasis added].")

<sup>4</sup> Its intended purposes included the frustration of unwise legislation, vindication of the interests of private citizens in litigation with the government; and "protection of litigants against overbearing and oppressive judges." Charles W. Wolfram, The Constitutional History of the Seventh Amendment, 57 Minn. L. Rev. 639, 670-71 (1973) (examining history of the Seventh Amendment, and discussing the purposes behind it).

"As the Constitution requires that the popular branch of the legislature should have an absolute check, so as to put a peremptory negative upon every act of the government, it requires that the common people, should have as complete a control, as decisive a negative, in every judgment of a court of judicature."<sup>5</sup>

62) But whereas a runaway jury poses a clear and present danger to those interests, a runaway judge can pose an even greater peril. As Thomas Jefferson explained:

[w]e all know that permanent judges acquire an esprit de corps; that, being known, they are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative; that it is better to leave a cause to the decision of cross and pile<sup>6</sup> than to that of a judge biased to one side; and that the opinion of twelve honest jurymen gives still a better hope of right than cross and pile does. It is left therefore, to the juries, if they think the permanent judges are under any bias whatever in any cause, to take on themselves to

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<sup>5</sup> The Works of John Adams, Second President of the United States 253 (Charles F. Adams ed., Little, Brown & Co. 1850); accord, The Federalist No. 83, at 465 (A. Hamilton) (I. Kramnick ed. 1987) ("The strongest argument in its favor is, that it is a security against corruption, [a]s there is always more time and better opportunity to tamper with a standing body of magistrates than with a jury summoned for the occasion.").

<sup>6</sup> Head or tails, as in tossing a coin, *i.e.* - random

judge the law as well as the fact. They never exercise this power but when they suspect partiality in the judges; and by the exercise of this power they have been the firmest bulwarks of English liberty.<sup>7</sup>

63) In *Beacon Theaters v. Westover*, 359 U.S. 500 (1959), the U.S. Supreme Court discussed the right to a jury, holding that when both equitable and legal claims are brought, the *right* to a jury trial still exists for the legal claim, which would be decided by a jury before the judge ruled on the equitable claim. "*The federal policy favoring jury trials is of historic and continuing strength. Parsons v. Bedford*, 3 Pet. 433, 446-449; *Scott v. Neely*, 140 U.S. 106; *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*, 356 U.S. 525, 537-539; *Beacon Theatres, Inc., v. Westover*, 359 U.S. 500; *Dairy Queen, Inc., v. Wood*, 369 U.S. 469." *Simler v. Conner*, 372 U.S. 221 at 222 (1963)

64) As noted, in *United States of America v. Clinton O. McMullin*, *supra*, the United States Court of Appeals, Tenth Circuit, stated as recently as 1991:

"...where the government seeks to reduce a tax assessment to judgment and obtain a personal money judgment against the taxpayer, the taxpayer then has a Seventh Amendment right to a jury trial. See *United States v. Anderson*, 584 F.2d 369, 373 (10th Cir.1978)."

65) In *Anderson* the court wrote quite succinctly:

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<sup>7</sup> Thomas Jefferson, Letter (to L'Abbe Arnoux), Jul. 19, 1789 at 2



"We are persuaded by the scholarly opinion of Judge Friendly in *Damsky v. Zavatt*, 289 F.2d 46 (2d Cir.)<sup>8</sup> to hold that there is a right to jury trial in such a case. See also *United States v. McMahan*, 569 F.2d 889, 891 (5th Cir.) (en banc); *Farmers-Peoples Bank v. United States*, 477 F.2d 752, 756-57 (6th Cir.). The right to trial by jury preserved by the Seventh Amendment is the right which existed under the English common law when the Amendment was adopted. *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657, 55 S.Ct. 890, 79 L.Ed. 1636.<sup>9</sup> Rule 38(a), F.R.Civ.P., provides that the right "as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." The Seventh Amendment question turns on the nature of the issue to be tried rather than the character of the overall action. *Ross v. Bernhard*, 396 U.S. 531, 538, 90 S.Ct. 733, 24 L.Ed.2d 729. And the inquiry involves considering the pre-merger custom, the remedy sought, and the practical abilities and limitations of juries. *Id.* at 538 n. 10,

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<sup>8</sup> Our question involves only the holding of Part I of *Damsky* since this action as brought against Mr. Anderson sought a personal judgment against him alone for recovery of the 1967 income tax as assessed

<sup>9</sup> The Seventh Amendment provides: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

90 S.Ct. 733. *United States v. Anderson*, 584 F.2d 369, 373 (10th Cir.1978).

### ISSUE H

There is a serious and irreconcilable *subject-matter jurisdiction* conflict in the U.S. Circuit Courts of Appeals regarding the true *subject-matter jurisdiction* of the federal courts to enforce the claims for personal income tax that are made within civil actions of the nature pursued in this case, against individual American citizens, by the plaintiff United States. It is the constitutional duty of this Supreme Court to settle that irreconcilable fundamental *subject-matter jurisdiction* conflict that exists within and between the various Circuit Courts of Appeals, so that the federal tax law will be harmonized in collection and enforcement operations, and made consistent in its application, operation, enforcement, and prosecution, throughout all of the 50 United States of America and within every district court house and courtroom, and in every single Circuit Court of Appeals in the nation as well.

66) The holding and decision of the district court and the Fourth Circuit Court of Appeals in Virginia in this case, that the federal personal income tax is an "*indirect tax*" that is authorized under Article I, Section 8, clause 1 of the U.S. Constitution stands in direct and immediate conflict with the holding and decision of the district court and Third Circuit Court of Appeals in New Jersey, that have been made in a nearly identical civil

enforcement action for the same alleged tax-payment failure in another case also being submitted to this court for review<sup>10</sup>, that the federal personal income tax is an “*unapportioned ‘direct’ tax*” under authority of the 16<sup>th</sup> Amendment alone.

### RELIEF SOUGHT

67) Therefore, Petitioner seeks an *Order* of this court (1) vacating the *summary judgment* erroneously granted in the lower district court, and (2) an order from this honorable court granting dismissal of the civil action from the district court *with prejudice*, for lack under Article I, Section 8, of the required, and properly and fully declared, *subject-matter jurisdiction* of the district court that can be taken over the civil action, sufficient to allow the court to take the jurisdiction necessary to enforce upon the Defendant the *claims* made in the plaintiff's *Complaint* seeking to enforce a *direct, unapportioned* assessment of a *disproportionately* imposed, and constitutionally prohibited *direct* tax on the *income* of *We the People*, under sole authority of the 16th Amendment and without legal basis rooted in a taxing power granted under Article I, Section 8.

"The failure of a court to give due consideration to a litigant's arguments denies the litigant due process and is an abuse of discretion. See, *Clisby v. Jones*, 960 F.2d 925, 935-936 (11th Cir.

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<sup>10</sup> *United States v. Michael Balice, et al.*, Case Nos.: 17-3143, 18-2432, 18-2528 in the Third Circuit Court of Appeals

1992)("We are disturbed by the growing number of cases in which we are forced to remand for consideration of issues the district court chose not to resolve."); *Grimes v. Yoos*, 298 Fed.Appx. 916, 921 (11th Cir. 2008); *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923 (1967); *Matter of Boomgarden*, 780 F.2d 657, 661 (7th Cir. 1985)([both parties to a law suit] "have a constitutional right to be heard on their claims, and the denial of that right to them [is] the denial of due process which is never harmless error." *Republic National Bank v. Crippen*, 224 F.2d 565, 566 (5th Cir. 1955)(quoting *Interstate Commerce Commission v. Louisville & Nashville Railroad Company*, 227 U.S. 88, 91, 33 S.Ct. 185, 186 (1913)).

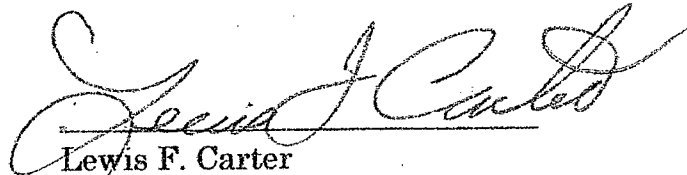
68) Unaddressed, the district court's ultra vires conduct and holdings will inflict significant *irreparable* harm upon the Defendant-Appellant-Petitioner through the district court's conducting an ultra vires taking of the Defendant's home and family properties and family farm without a valid *subject-matter jurisdiction* sufficient to do so by the facts or the *claims*, and without allowing a jury of the defendant's peers to review the disputed facts, the written law, and the plain and clear provisions of the U.S. Constitution which are being violated.

69) Absent review and correction by this honorable Supreme Court now, the defendants will be irreparably harmed by this unauthorized, erroneous, *ultra vires* taking of the defendant's family home, farm, and

properties, that is wrongfully being perpetrated by the district court *without due process* of law and without a properly identified *subject-matter jurisdiction* of the court (that can be taken by the court over the specific *claims* that were made in the plaintiff's defective *Complaint, as they were argued therein*) ever being declared or shown on the record of the action in the court, as required by law.

70) To prevent the injustice sure to result from this *ultra vires* taking of Petitioners private property, home and farm, under the conflicting operations of the two Circuit Courts of Appeals, this honorable court should grant this *Petition* to allow the full court to address these matters of great national importance, before this honorable court loses its ability to control the exponentially expanding repercussive damages that are occurring to the Defendant/Petitioner, and which will further accrue by additional on-going *ultra vires* acts and conduct of the district court, if there is no intervention by this honorable court now.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lewis F. Carter", written over a horizontal line.

Lewis F. Carter  
1807 Oldhams Rd.  
Hague, VA 22469-2010

## END NOTES

<sup>1</sup> "The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, so far as human prudence could insure, their beneficial execution. This could not be done, by confiding the choice of means to such narrow limits as not to leave it in the power of congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared, that the best means shall not be used, but those alone, without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it.....

The baneful influence of this narrow construction on all the operations of the government, and the absolute impracticability of maintaining it, without rendering the government incompetent to its great objects, might be illustrated by numerous examples drawn from the constitution, and from our laws. The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised,

whenever the sovereign has a right to act, as incidental to his *constitutional powers*. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial exercise.... We think so for the following reasons: 1st. The clause is placed among the powers of congress, not among the limitations on those powers. 2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been, or can be assigned, for thus concealing an intention to narrow the discretion of the national legislature, under words which purport to enlarge it. The framers of the constitution wished its adoption, and well knew that it would be endangered by its strength, not by its weakness....We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional ..." *McCulloch v. State of Maryland*, 17 U.S. 316 (1819)