IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO. 16-mc-2688
	)	
JOHN B. TROWBRIDGE,	)	
	)	
Respondent.	)	

RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO WITHDRAW TAG-END ORDER IN OSC

Respondent's Motion to Withdraw Tag-end Order in OSC (Document 19) presents certain claims, defenses, and other legal contentions that are warranted by existing law, i.e., among other things, that (a) the subject tag-end order obviates the need or opportunity for respondent to be heard by ordering respondent to comply with the subject IRS summons before determining whether respondent needs to be ordered to comply with the IRS summons, a denial of procedural due process of law, and (b) there is no provision of the U.S. Constitution that gives the Court the capacity to take territorial jurisdiction over person or property in Harris County, Texas, and that enforcement of the said tag-end order would operate to deny respondent substantive due process of law.

Petitioner's response in opposition (Document 22) to respondent's motion to withdraw tag-end order in OSC fails to address either of the above material issues and is not warranted on the evidence. For this reason petitioner's response in opposition is frivolous and meritless and counsel for petitioner should be sanctioned under Rule 11(b)(1), (2), (3), and (4) of the Federal Rules of Civil Procedure.

Petitioner's response in opposition (Document 22) makes certain claims for which there is no evidence; to wit"

- "In this case, respondent admits that he is a resident of Harris County, TX" (p. 6); and
- "Respondent's argument that this Court lacks the authority to issue the Order to Show Cause in this case because it does not have jurisdiction over individuals residing in Harris County, TX is simply wrong" (p. 8);

Re first bulleted item above: Respondent is a resident of Harris County, Texas, not Harris County, "TX." "TX" is an internal United States Postal Service designator and not a geographic area and there is no evidence to the contrary or that respondent made such claim.

Re second bulleted item above: Respondent is one of the "joint tenants in the sovereignty," *Chisholm v. Georgia*, 2 U.S. 419, 471–472 (1793), not a statutory "individual," 5 U.S.C. § 552(a)(2), and there is no evidence that respondent made such claim.

Whereas there is no evidentiary support for petitioner's above factual contentions, counsel for petitioner should be sanctioned under Rule 11(b)(3) of the Federal Rules of Civil Procedure.

UNABLE TO PROVE CONSTITUTIONAL AUTHORITY, COUNSEL FOR PETITIONER ATTEMPTS TO LEAD THE COURT INTO ERROR

The Supremacy Clause of the U.S. Constitution, Article VI, Clause 2, provides, in pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . ."

What this means is that unless a particular statute is made in pursuance of the U.S. Constitution, an adverse suit authorized thereby is not in and of itself sufficient to vest jurisdiction in the Federal courts; to wit:

> 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).

Unless a statute authorizing executive or judicial action is made in pursuance of the U.S. Constitution, no jurisdiction is created and any such congressional statute is irrelevant; to wit:

> As 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. Their concurrence is necessary to vest it. . . . It can be brought into activity in no other way. *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1867).

The essence of respondent's motion to dismiss (Document 18) is lack of constitutional authority for any judge of the United States to take territorial jurisdiction over person or property in Harris County, Texas, and Keith P. Ellison's lack of constitutional authority to take territorial (or any other form of) jurisdiction in Harris County, Texas.

Notwithstanding the above blackletter law as to the primacy of constitutional authority in respect of creation of jurisdiction and the nature of respondent's motion, petitioner's response in opposition on pages 5 and 6 cites a statute of Congress, I.R.C. § 7604, as ultimate authority for Keith P. Ellison to take territorial jurisdiction and enforce an Internal Revenue Service Summons against petitioner and petitioner's property in Harris County, Texas; to wit:

> If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found **shall have jurisdiction** by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data. I.R.C. § 7604(a). (emphasis added) [*sic*]
>
> Whenever any person summoned ... neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court ... for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. **It shall be the duty of the judge** ... to hear the application, and, if

> satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge ... shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. I.R.C. § 7604(b). (emphasis added). [*sic*]

Neither I.R.C. § 7604(a) nor (b) is made in pursuance of the U.S. Constitution because there is no provision thereof that gives any judge of the district court the capacity to take territorial jurisdiction over person or property or "compel such attendance, testimony, or production of books, papers, records, or other data" or "enforce obedience to the requirements of the summons and to punish such person for his default or disobedience" in Harris County, Texas.

The reason petitioner's response in opposition fails to present a constitutional authority for Keith P. Ellison to take territorial jurisdiction and enforce I.R.C. § 7604(a) and (b) over respondent or respondent's property in Harris County, Texas, is that none exists.

Petitioner on page 6 of petitioner's response in opposition claims that the Court validly issued the OSC and has the authority to issue "this Order," but fails to support said claims with evidence of a constitutional authority; to wit:

> This Court validly issued an Order to Show Cause in this case directing respondent to show cause why he should not be compelled to comply with the summons served on him on August 9, 2016. It is clear that this Court has the authority to issue this Order.

It is counsel for petitioner's position that statutes of Congress which are not made in pursuance of the U.S. Constitution, such as I.R.C. § 7604(a) and (b), nevertheless are sufficient authority for a district judge to take territorial jurisdiction over person or property in Harris County, Texas, an unsupportable position.

The reason petitioner's response in opposition fails to present a constitutional authority for the instant OSC or said tag-end order, is that none exists.

Counsel for petitioner's argument and response in opposition is frivolous, meritless, and an egregious repudiation of the U.S. Constitution and willful attempt to lead the Court into error for which counsel for petitioner should be sanctioned under Rule 11(b)(1), (2), and (3) of the Federal Rules of Civil Procedure and made the subject of disbarment proceedings.

For the above reasons, respondent's motion should be granted and the subject tag-end order in the OSC expunged.

Date: May 1, 2017

Respectfully submitted,

John Parks Trowbridge, Jr.
9816 Memorial Boulevard #205
Humble, Texas
Phone: (832) 472-3683
Fax: (281) 540-4329
Email:
dr.john.parks.trowbridge.jr@earthlink.net

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2017, I served a complete copy of RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO WITHDRAW TAG-END ORDER IN OSC by First Class mail on the following parties:

LEWIS A. BOOTH
Special Assistant
United States Attorney
8701 S. Gessner, Ste. 710
Houston, Texas 77074

John Parks Trowbridge, Jr.