IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO. 17-mc-1557
	)	
JOHN PARKS TROWBRIDGE,	)	
	)	
Respondent.	)	

MOTION TO DISMISS (12b6)

COMES NOW John Parks Trowbridge, Jr., a.k.a. John Parks Trowbridge, in the above-captioned matter, specially and not generally, respectfully, and without attorney, to move the Court to dismiss with prejudice the action of the petitioner for failure to state a claim upon which relief can be granted.

In support of this Motion, respondent would show the Court the attached Memorandum of Law, made fully part hereof and included herein by reference as though set forth in full.

WHEREFORE, the Undersigned prays the Court:

1. That the cause of action of the Plaintiff be dismissed with prejudice;
2. That the cost of this action be taxed against the Plaintiff; and
3. For such other and further relief that the Court may deem just and fair.

This, the 17th day of July 2017.

John Parks Trowbridge, Jr.

MEMORANDUM OF LAW

In section I on page 1 of the instant petition (Document 1), petitioner asserts "This Court has jurisdiction to issue appropriate process upon application by the petitioner under authority of 26 U.S.C. §§ 7402(b) and 7604(a)."

These same two sections of Title 26 U.S.C. were claimed as authority in the previous petition in this matter, Civil Action No. 16-mc-2688, Southern District of Texas, Houston Division (dismissed with prejudice at petitioner's request for error in name of respondent).

In that action, the basis of two of respondent's motions, Documents 18 and 19 thereof, was lack of constitutional authority that gives the court the capacity to take territorial jurisdiction or enter an order enforcing an IRS summons against a resident (respondent) of Harris County, Texas. In support of this point, respondent cited certain provisions of that certain constitution ordained and established September 17, 1787, and implemented March 4, 1789, Independence Hall, Philadelphia, Pennsylvania (hereinafter the "Constitution"), and numerous Supreme Court cases relating to jurisdiction and constitutional authority.

Petitioner's responses in opposition thereto, Documents 23 and 22, respectively, labeled said motions as "frivolous, meritless, and fails to state grounds for which relief can be granted" or the like, no less than 10 times in the former and seven times in the latter.

Whereas, for petitioner to assert that respondent's citation of the Constitution or opinions of the Supreme Court is frivolous or meritless, it is clear that petitioner is relying on some other factor entirely, that allows the Court to *bypass* the requirement of capacity, as given by the Constitution, to take territorial jurisdiction in Texas and enforce a civil statute against a resident of Texas; and that the species of "jurisdiction" to which petitioner refers in the instant petition, *supra*, and upon which petitioner relies for the Court to enforce the subject Internal Revenue

Service summons against respondent, relates not to respondent's place of residence or geographic location.

The concept of domicil in the United States by virtue of citizenship of the United States, irrespective of residence in a country foreign to the United States, is explained very well in *Blackmer v. United States*, 284 U.S. 421, 436-438 (1932); to wit (Underline emphasis added.):

> While it appears that the petitioner removed his residence to France in the year 1924, it is undisputed that he was, and continued to be, a citizen of the United States. He continued to owe allegiance to the United States. By virtue of the obligations of citizenship, the United States retained its authority over him, and he was bound by its laws made applicable to him in a foreign country. Thus, although resident abroad, the petitioner remained subject to the taxing power of the United States. Cook v. Tait, 265 U.S. 47, 54 , [*sic*] 56 S., 44 S. Ct. 444. For disobedience to its laws through conduct abroad, he was subject to punishment in the courts of the United States. United States v. Bow- [284 U.S. 421, 437] man, 260 U.S. 94, 102 , [*sic*] 43 S. Ct. 39. With respect to such an exercise of authority, there is no question of international law, but solely of the purport of the municipal law which establishes the duties of the citizen in relation to his own government. While the legislation of the Congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States, the question of its application, so far as citizens of the United States in foreign countries are concerned, is one of construction, not of legislative power. American Banana Co. v. United Fruit Co., 213 U.S. 347, 357 , 29 S. Ct. 511, 16 Ann. Cas. 1047; United States v. Bowman, supra; Robertson v. Labor Board, 268 U.S. 619, 622 , 45 S. Ct. 621. Nor can it be doubted that the United States possesses the power inherent in sovereignty to require the return to this country of a citizen, resident elsewhere, whenever the public interest requires it, and to penalize him in case of refusal. Compare Bartue and the Duchess of Suffolk's Case, 2 Dyer's Rep. 176b, 73 Eng. Rep. 388; Knowles v. Luce, Moore 109, 72 Eng. Rep. 473.4 What in England was the prerogative of the sov- [284 U.S. 421, 438] ereign in this respect pertains under our constitutional system to the national authority which may be exercised by the Congress by virtue of the legislative power to prescribe the duties of the citizens of the United States. It is also beyond controversy that one of the duties which the citizen owes to his government is to support the administration of justice by attending its courts and giving his testimony whenever he is properly summoned. Blair v. United States, 250 U.S. 273, 281 , 39 S. St. Ct. 468. And the Congress may provide for the performance of this duty and prescribe penalties for disobedience.

Title 28 U.S.C. identifies the several commonwealths united by and under authority of the Constitution and admitted into the Union as the *freely associated compact states*, 28 U.S.C. §

297(a), and treats of said states as *countries*, *id.* at (b). Authority for 28 U.S.C. § 297(a) and (b) is 106 Stat. 4672-4673 and 126 Stat. 1145, which provide, respectively:

> SEC 1022. SERVICE OF ARTICLE III JUDGES ON TERRITORIAL COURTS.
> Chapter 13 is amended by—
> (1) Adding at the end thereof the following:
> "§297. Assignment of judges to courts of the freely associated compact states
> (a) The Chief Justice or the chief judge of the United States Court of Appeals for the Ninth Circuit may assign any circuit, district, magistrate, or territorial judge of a court of the Ninth Circuit, with the consent of the judge so assigned, to serve temporarily as a judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.
> "(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States Courts any amount received pursuant to this subsection."; and
> (2) Amending the table of sections by adding at the end thereof the following:
> "297. Assignment of judges to courts of the freely associated compact states.".
>
> SEC 2. CLARIFYING THE TEMPORARY ASSIGNMENT OF JUDGES TO THE FREELY ASSOCIATED COMPACT STATES.
> Section 297(a) of title 28, United States Code, is amended by striking "circuit or district judge" and inserting "circuit, district, magistrate, or territorial judge of a court".

The several 126 Stat. 1145 *countries* that comprise the 106 Stat. 4672-4673 *freely associated compact states* retain their sovereignty; to wit:

> It is an axiom in politics, that a sovereign and independent State is not . . . amenable to any judicial power, without its own consent. All the States of this Union were sovereign and independent, before they became parties to the federal compact . . . *Cohens v. Virginia*, 19 U.S. 264, 303 (1821).
>
> [19 U.S. 264, 327] The constitution recognizes the sovereignty of the States: for it admits, that treason may be committed against them. They would not be entitled to the appellation of 'States' if they were not sovereign.
>
> It has been uniformly held that the States are separate sovereigns with respect to the Federal Government because each State's power to prosecute derives from its

> inherent sovereignty, preserved to it by the Tenth Amendment, and not from the Federal Government. . . . *Heath v. Alabama*, 474 U.S. 82 (1985).

Texas, like France in *Blackmer*, is a sovereign country.

Petitioner's claim of the Court's jurisdiction in the instant petition is predicated on petitioner's presumption that respondent is a person, individual, and citizen of the United States whose domicil or residence for legal purposes is the United States.

The power of the Court to enforce respondent's compliance with the instant Internal Revenue Service summons by way of authority of 26 U.S.C. §§ 7402(b) or 7604(a) is an aspect of municipal, not international, law and is a matter of judicial construction, not legislative power.

Notwithstanding the utility of Chief Justice Hughes' words in delivering the opinion of the court in *Blackmer*, *supra*, however: As evidenced herein below, said words are only partially true—because of the material fact that the (a) "United States" cited in *Blackmer* differs materially from the "United States" of the Constitution of March 4, 1789, and (b) the "citizens of the United States" at the time of *Blackmer* comprise an entirely different species of body politic than that of which any "Citizen of the United States," U.S. Const., Art. I, §§ 2, cl. 2; 3, cl. 3; Art. II, § 1, cl. 5, would have been a part on March 4, 1789.

Whereas, we are concerned primarily with the meaning of "United States" as it applies to the instant petition and whether respondent is a citizen of the United States or domiciled in the United States, an examination of the pertinent statutes-at-large upon which the Internal Revenue Code authorities cited in the petition ultimately depend, is appropriate.

Petitioner charges Court, counsel for petitioner with knowledge of Statutes-at-Large

> All persons in the United States are chargeable with knowledge of the Statutes-at-Large. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85, 68 S.Ct. 1, 3-4, 92 L.Ed. 10 (1947); Lavin v. Marsh, 644 F.2d 1378, 1383 (9th Cir. 1981). . . . *Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093 (9th Cir.1981).

In accordance with *Bollow*, *supra*: Respondent hereby alleges that KEITH P. ELLISON and LEWIS ARNOLD BOOTH, II are persons in the United States and charges KEITH P. ELLISON and LEWIS ARNOLD BOOTH, II with knowledge of the Statutes-at-Large.

***Persons, individuals, citizens of the United States* liable to income tax**

Petitioner alleges that 26 U.S.C. §§ 7402(b) and 7604(a) give the Court authority to issue appropriate process to enforce the subject Internal Revenue Service Summons against respondent.

Authority for 26 U.S.C. § 7402(b) is found at 68A Stat. 873; to wit, in pertinent part:

> SEC. 7402. JURISDICTION OF DISTRICT COURTS.
> . . . (b) TO ENFORCE SUMMONS.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Authority for 26 U.S.C. § 7604(a) is found at 68A Stat. 902; to wit, in pertinent part:

> SEC. 7604. ENFORCEMENT OF SUMMONS.
> (a) JURISDICTION OF DISTRICT COURT.—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.

When Congress give a *word* or *phrase* a specific definition in a particular body of law, the ordinary definition and usage thereof as a mere *word* or *words* (as found in the dictionary) is forfeit and the novel definition and meaning of the new statutory *term*, controls—i.e., there is no discretion to take the new *term* in any other way than that provided by Congress; e.g.:

> Table 1. Linguistic Inference Canons . . .
> . . . Ordinary usage: Follow ordinary usage of terms, unless the legislature gives them a specified or technical meaning. . . .
> Dictionary definition: Follow dictionary definitions of terms, unless the legislature has provided a specific definition. Jacob Scott, "Codified Canons and the Common Law of Interpretation," *The Georgetown Law Journal*, Vol. 98, Issue 2, January 2010, p. 357.

By way of citation of 26 U.S.C. §§ 7402(b) and 7604(a), petitioner impliedly alleges that respondent is a *person*, in accordance with the meaning of the controlling definition of the term "person" at Internal Revenue Code (hereinafter "IRC" or "26 U.S.C.") § 7701(a)(1). Authority for 26 U.S.C. § 7701(a)(1) is found at 68A Stat. 911, which provides, in pertinent part:

> SEC. 7701. DEFINITIONS.
> (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—
> (1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

It is reasonable to conclude that petitioner alleges not that respondent is a trust, estate, partnership, association, company, or corporation but an *individual*. "Individual" is not defined in IRC, but is at Title 5 *Government Organization and Employees* § 552a *Records maintained on individuals*, subsection (a)(2). Authority for 5 U.S.C. § 552a(a)(2) is found at 88 Stat. 1897; to wit in pertinent part:

> SEC. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:
> "§552a. Records maintained on individuals
> "(a) DEFINITIONS.—For purposes of this section—
> ". . . (2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;"

Whereas, the 5 U.S.C. § 552a(a)(2) "individual" is either a citizen of the United States, resident of the United States, or both, 26 C.F.R. *Internal Revenue* § 1.1-1—which identifies those who are liable to tax under IRC—is compatible / consistent with the provisions of the above 88 Stat. 1897 definition of the 5 U.S.C. § 552a(a)(2) term "individual"; to wit:

> § 1.1-1 Income tax on individuals.
> (a) *General rule.*
> (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States . . .
> (b) *Citizens or residents of the United States liable to tax. . . .*
> (c) *Who is a citizen.* Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. . . .

Meaning of "United States" in Internal Revenue Code of 1986

IRC defines "United States," "State," "Includes and including" at 26 U.S.C. § 7701(a)(9) and (10) and (c), respectively. Authority for 26 U.S.C. § 7701(a)(9) and (10) is found at 68A Stat. 911; (c) at 68A Stat. 913, which provide, in pertinent part:

> SEC. 7701. DEFINITIONS.
> (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—
> . . . (9) UNITED STATES.—The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.
> (10) STATE.—The term "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out the provisions of this title.
> . . . (c) INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

The above 68A Stat. 911 definition of "United States" and "State" is amended at 73 Stat. 146 and 147, respectively; to wit, in pertinent part:

> (g) Section 7701(a)(9) of the Internal Revenue Code of 1954 (relating to definition of "United States") is amended by striking out "the Territories of Alaska and Hawaii" and inserting in lieu thereof "the Territory of Hawaii".
> (h) Section 7701(a)(10) of the Internal Revenue Code of 1954 (relating to definition of State[*sic*]) is amended by striking out "Territories" and inserting in lieu thereof "Territory of Hawaii".

The above 73 Stat. 146 and 147 definition of "United States" and "State" is amended at 74 Stat. 416; to wit, in pertinent part:

> (i) Section 7701(a)(9) of the Internal Revenue Code of 1954 (relating to definition of "United States") is amended by striking out ", the Territory of Hawaii,".
> (j) Section 7701(a)(10) of the Internal Revenue Code of 1954 (relating to definition of "State") is amended by striking out "the Territory of Hawaii and".

The residual of the above Statutes-at-Large (found at, respectively, 26 U. S.C. 7701(a)(9), (10) and (c)),provides:

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

. . . (9) United States

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

. . . (c) The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Because the above definition of "United States" uses two other IRC terms, "includes" and "State," within its provisions, we must account for the meaning of the definition of those terms in order to ascertain the meaning of said definition of "United States."

"Includes and including".

The above controlling definition of "Includes and including" found at 68A Stat. 913 is a hybrid composite of two basic rules of statutory construction, *ejusdem generis* (Lat. Of the same kind, class, or nature) and *expressio unius est exclusio alterius* (Lat. The expression of one thing is the exclusion of another; *infra*, p. 12). Use of "includes" or "including" in the definition of any IRC term signifies that such definition is at once both expansionary and exclusionary: *expansionary* in that it comprehends other things not listed in the definition; *exclusionary* in that such other things are confined / limited to those of the same kind or class as those specifically enumerated—a concept succinctly expressed at 27 C.F.R. § 72.11; to wit: "The terms 'includes' and 'including' do not exclude things not enumerated which are in the same general class."

The above controlling IRC definition of "United States" depends utterly on the meaning of the above controlling IRC definition of "State" for its meaning, but said definition of "State" reveals almost nothing—only that said definition "shall be construed to include the District of Columbia"—and makes no reference, express or implied, to any other State. Wherefore, it is

impossible to ascertain the meaning of the definition of the term "United States" or "State" as given without resort to the preamble to said definitions, which provides: "When used in this title, where not otherwise distinctly expressed . . ." (Underline emphasis added.).

The term "State" is otherwise distinctly expressed at 26 U.S.C. § 6103(b)(5)(A)(i). Authority for 26 U.S.C. § 6103(b)(5)(A)(i) is found at 100 Stat. 2764, which provides, in pertinent part:

> SEC. 1568. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO CERTAIN CITIES.
> (a) IN GENERAL.—Subsection (b) of section 6103 (relating to definitions for confidentiality and disclosure of returns and return information) is amended—
> (1) By striking out paragraph 5 and inserting in lieu thereof the following:
> "(5) STATE.—The term 'State' means—
> "(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and" [*sic*]

The above amendment at 100 Stat. 2764 is amended at 102 Stat. 3534; to wit, in pertinent part:

> (3) CLARIFICATION OF DISCLOSURE UNDER CERTAIN AGREEMENTS.—
> . . . (B) Subparagraph (A) of section 6104(b)(5) of the 1986 Code is amended by striking out "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau" and inserting in lieu thereof "and the Commonwealth of the Northern Mariana Islands".

The above amendment at 102 Stat. 3534 is amended at 120 Stat. 2971 as follows:

> SEC. 421. REGIONAL INCOME TAX AGENCIES TREATED AS STATES FOR PURPOSES OF CONFIDENTIALITY AND DISCLOSURE REQUIREMENTS.
> (A) IN GENERAL.—Paragraph 5 of section 6103(b) is amended to read as follows:
> "(5) STATE.—
> (A) IN GENERAL.—The term 'State' means—
> "(i) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands," [*sic*]

The above amendment at 120 Stat. 2971 is amended at 121 Stat. 2487 as follows:

> (34)(A) Subparagraph (A) of section 6103(b)(5) is amended by striking "the Canal Zone,".

The residual of the above re "State" (and found at 26 U.S.C. § 6103(b)(5)(A)(i)) is:

> (5) State
> (A) In general
> The term "State" means—
> (i) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

There is, however, a phrase or expression of uncertain meaning in the controlling definition of the IRC term "State"; specifically, "any of the 50 States," "the 50 States," or "50 States." Firstly, neither the phrase "any of the 50 States" nor the expression "the 50 States" or "50 States" is a term defined by Congress, so we must look elsewhere for an explanation of the meaning of the word "States"—but we are barred from looking elsewhere for any such explanation because this is the ***controlling*** definition of "State" in Title 26 U.S.C. Secondly, the plural form of the same word being defined is not an explanation the meaning of the singular.

To resolve words or phrases of uncertain meaning in a particular statute we must employ the same rules of statutory construction that Congress used to compose that statute; to wit:

> It is presumable that Congress legislates with knowledge of our basic rules of statutory construction, . . . *McNary v. Haitian Refugee Center, Inc.* (89-1332), 498 U.S. 479 (1991).

The basic rule of statutory construction that allows us to ascertain the meaning of the above definition of the IRC term "State," despite the aforementioned phrase / expression of uncertain meaning, is *noscitur a sociis*; to wit;

> The rule *noscitur a sociis* (known by its associates): when a word or phrase is of uncertain meaning, it should be construed in the light of the surrounding words . . . *A Dictionary of Law*, 7th ed., Jonathan Law and Elizabeth Martin, eds. (Oxford: Oxford University Press, 2009) (hereinafter "OXFORD"), p. 295.

> *Noscitur a sociis.* It is known from its associates. The meaning of a word may be ascertained by reference to the meaning of words associated with it. Broom, Max 588 ; 1 B. & C. 644 ; 18 C. B. 102, 893 ; 5 M. & G. 639, 667 ; 12 Allen (Mass.) 77 ; 105 Mass. 433 ; 11 Barb. (N. Y.) 43, 63 ; 20 *id.* 644 ; 166 U. S. 1, 17 Sup. Ct. 495, 41 L. Ed. 897 ; 67 Ill. App. 665. John Bouvier, *Bouvier's Law Dictionary*, 3rd rev. (8th ed.), rev. by Francis Rawle (St. Paul, Minn.: West Publishing Co., 1914) (hereinafter "BOUVIER'S"), p. 2140.
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> Noscitur a sociis. It is known from its associates. 1 Vent. 225. The meaning of a word is or may be known from the accompanying words. 3 Term R. 87 ; Broom, Max 588. Henry Campbell Black, *A Dictionary of Law* (St. Paul, Minn.: West Publishing Co., 1891), p. 827.
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> NOSCITUR A SOCIIS (*nō'-si-ter ā sō'-she-is*)—Lat.: it is known by its associates. Under this rule of statutory construction, the meaning of a word in a statute is ascertained in light of the meaning of the words with which it is associated. 250 N.W. 2d 412, 413. When two or more words in a statute are grouped together, and ordinarily have a similar meaning but are not equally comprehensive, the general word will be limited and qualified by the specific word. 218 S.E. 2d 735, 740. Stephen H. Gifis, *Law Dictionary*, 3rd ed. (Hauppage, N.Y.: Barron's Educational Series, Inc., 1991), p. 323.

Re application of *noscitur a sociis* to the phrase / expression of uncertain meaning in the controlling, 100 Stat. 2764, 102 Stat. 3534, 120 Stat. 2971, 121 Stat. 2487 IRC definition of the term "State," the surrounding words associated with it / accompanying it are:

> The term "State" means the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

What the above "States" have in common is that they are all **bodies politic subject to the exclusive legislative power of Congress who have their own governments and tax systems**.

Whereas, no other IRC term, such as "includes" or "including," is used in the controlling, 100 Stat. 2764, 102 Stat. 3534, 120 Stat. 2971, 121 Stat. 2487 definition of the IRC term "State," and there are no general words following the specific things listed in the definition, the basic rule of statutory construction *expressio unius est exclusio alterius* confirms that the list is exhaustive as given and our construction / interpretation correct—because **there is no other body politic of this same kind, class, or nature to which the definition extends**; to wit:

> The rule *expressio unius est exclusio alterius* (the inclusion of the one is the exclusion of the other): when a list of specific items is not followed by general words it is to be taken as exhaustive. For example, "weekends and public holidays" excludes ordinary weekdays. OXFORD, p. 295.
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> *Expressio unius est exclusio alterius.* The expression of one thing is the exclusion of the other. . . . 36 Fed. 880 ; 104 U.S. 25, 26 L. Ed. 367. It is a rule of construction. 222 U. S. 513, 32 Sup. Ct. 117, 56 L. Ed. 291. BOUVIER'S, p. 2134.
>
> § 47:23 Expressio unius est exclusio alterius
>
> As the maxim is applied to statutory interpretation, where . . . the persons or things to which it refers are designated, there is an inference that all omissions should be understood as exclusions. The maxim does not apply to every statutory listing or grouping. It has force only when the items expressed are members of an associated group or series, justifying the inference that the items not mentioned were excluded by deliberate choice. [Extensive footnoting omitted.] Norman J. Singer and J.D. Shambie Singer, *Statutes and Statutory Construction*, 7th ed., 2007 new ed., vol. 2A, Thomson – West, (hereinafter "SINGERS") pp. 398-412.

Wherefore, the meaning of the controlling definition of the IRC term "State" is the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands **and no other body politic**.

Ultimate meaning of IRC term "United States"

Wherefore, per 68A Stat. 911, 73 Stat. 146, and 74 Stat. 416, *supra*, and the meaning of the controlling definition of the IRC term "State," *supra*: The term "United States" when used in a geographical sense means the collective of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia **and no other geographic area**.

The above meaning of the controlling IRC definition of "United States" comports with the opinion of the court in *Blackmer*.

***Blackmer* judicially construes municipal—not federal—legislation of Congress**

Likely unbeknownst to the petitioner in *Blackmer* (Harry M. Blackmer), on September 8, 1916, beginning with the revenue act of that date and continuing in every subsequent revenue act

to the present day, such as the Revenue Act of 1928, in force at the time of *Blackmer* (February 15, 1932)—Congress officially "decree" that, for purposes of internal revenue, the proper noun "United States" is a statutory term with a politically / geographically opposite meaning to that manifested in the Constitution; to wit:

> TITLE I.—INCOME TAX. . . .
> SEC. 15. That the word "State" or "United States" when used in this title shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions. "An Act To increase the revenue, and for other purposes," Ch. 463, 39 Stat. 756, 773, September 8, 1916.

Application of *expressio unius est exclusio alterius* (*supra*, p. 13) to the above 39 Stat. 773 definition of "United States" reveals that the items comprehended thereby comprise all the bodies politic over whom Congress on September 8, 1916, exercise exclusive legislative power: the District of Columbia, Porto Rico, the Philippine Islands, Alaska, Hawaii, American Samoa, Guam, Midway Islands, and the Panama Canal Zone **and no other body politic**.

The *Blackmer* court confesses the law form it uses as authority in its judicial construction of the legislative power of Congress against Mr. Blackmer; to wit: "4. Questions of authority in such cases are not questions of international law, but of municipal law. P. 284 U. S. 437." *Blackmer*, 284 U.S. 421.

Today, as at the time of *Blackmer*, the preeminent statutory "State" of the statutory "United States," the District of Columbia, is a municipal corporation.[1] Law such as that judicially construed in *Blackmer* and cited in the petition as authority to enforce the instant Internal Revenue Service summons is not of a national / federal but rather a local / municipal

[1] "An Act to provide a Government for the District of Columbia," ch. 62, 16 Stat. 419, February 21, 1871; later legislated in "An Act Providing a Permanent Form of Government for the District of Columbia," ch. 180, sec. 1, 20 Stat. 102, June 11, 1878, to remain and continue as a municipal corporation (brought forward from the Act of 1871, as provided in the Act of March 2, 1877, amended and approved March 9, 1878, *Revised Statutes of the United States Relating to the District of Columbia . . . 1873–'74* (in force as of December 1, 1873), sec. 2, p. 2); as amended by the Act of June 28, 1935, 49 Stat. 430, ch. 332, sec. 1 (Title 1, Section 102, District of Columbia Code (1940)).

character and does not obtain against anyone except those with actual or legal residence in the District of Columbia ("citizens of the United States"); e.g., from a time when "State" and "United States" were not statutory terms and the District of Columbia was not incorporated:

> That though the laws of Congress, when passed in execution of a federal power, extend over the Union, and being laws of the United States, are a part of the supreme law of the land: yet, a law passed like the one in question, in execution of the power of municipal legislation, extends only so far, as the power under which it was passed-that is, to the boundaries of the District; that, therefore, it is no law of the United States, and consequently not a part of the supreme law of the land. . . . *Cohens v. Virginia*, 19 U.S. 264, 296-297 (1821).

Petitioner's claim relies on the presumption / implied allegation that respondent is a 106 Stat. 4672-4673 or 126 Stat. 1145 "person"—i.e., an "individual" who is (1) a member of the body politic of the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, or Commonwealth of the Northern Mariana Islands, and (2) whose domicil or legal residence is the geographic area occupied by the body politic of one of the aforesaid 100 Stat. 2764, 102 Stat. 3534, 120 Stat. 2971, 121 Stat. 2487 "States" of the 68A Stat. 911, 73 Stat. 146, 74 Stat. 416 "United States."

BOUVIER'S (*supra*, p. 11) is sufficient to resolve the issue before us on the subject of domicil or residence; to wit:

> RESIDENCE. Personal presence in fixed and permanent abode. . . . A residence is different from a domicil, although it is a matter of great importance in determining the place of domicil. The essential distinction between residence and domicil is that the first involves the intent to leave when the purpose for which one has taken up his abode ceases. The other has no such intent ; the abiding is *animo manendi*. One may seek a place for the purposes of pleasure, of business, or of health. If his intent be to remain, it becomes his domicil ; if his intent be to leave as soon as his purpose is accomplished, it is his residence. See . . . DOMICIL. . . . Residence indicates permanency of occupation, as distinct from lodging or boarding, or temporary occupation, but does not include as much as domicil, which requires an intention combined with residence. . . . In a statute it was held not to mean business residence, but the fixed home of the party . . . . It is a physical fact, while domicil is a matter of intention : *bona fide* residence means "residence with domiciliary intent" . . . [p. 2920]

ANIMUS MANENDI. The intention of remaining.

To acquire a domicil, the party must have his abode in one place, with the intention of remaining there ; for without such intention, no new domicil can be gained, and the old will not be lost. See DOMICIL. [p. 199]

DOMICIL. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. . . .

The domicil of a person is that place or country in which his habitation is fixed, without any present intention of removing therefrom. [1892] 3 Ch. 180 ; Story, Confl. L § 43.

Dicey defines domicil as, in general, the place or country which is in fact his permanent home, but is in some cases the place or country which, whether it be in fact his home or not, is determined to be his home by a rule of law ; Dicey, Dom. 42 ; and again as "that place or country either (1) in which he in fact resides with the intention of residence *(animus manendi)* ; or (2) in which, having so resided, he continues actually to reside, though no longer retaining the intention of residence ; or (3) with regard to which, having so resided there, he retains the intention of residence, though he, in fact, no longer resides there;" *id.* 44. The same definition substantially is given in Dicey, Confl. Laws (Moore's ed.) 727. It is there said not to include cases of created by operation of law.

Domicil is "a habitation fixed in some place with the intention of remaining there alway [*sic*]." Vattel, *Droit des Gens*, liv. 1, c. xix, s. 218, *Du Domicile*. . . .

"That place is to be regarded as a man's domicil which he has freely chosen for his permanent abode [and thus for the centre at once of his legal relations and his business]." Savigny, S. 353.

"A residence at a particular place, accompanied with [positive or presumptive proof of] an intention to remain there for an unlimited time." Phillimore, Int. Law 49.

"That place is properly the domicil of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected or uncertain) shall occur to induce him or adopt some other permanent home." 28 L. J. Ch. 361, 266, per Kindersley, V. C. It is said to be a relation between an individual and a particular locality or country. 22 Harv. L. Rev. 220 ; In Re Reed's Will, 48 Or. 500, 87 Pac. 373. . . .

Legal residence, inhabitancy, and domicil are generally used as synonymous . . . but much depends on the connection and purpose . . .

Two things must concur to establish domicil,—the fact of residence and the intention of remaining. These two must exist or must have existed in combination . . .

Proof of domicil does not depend on any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. . . . Engaging in business and voting in a particular place are evidence of domicil there . . .

Domicil is said to be of three kinds,—domicil of origin, or by birth, domicil by choice, or domicil by operation of law. The place of birth is the *domicil by birth* if

at that time it is the domicil of the parents . . . If the parents are on a journey, the actual domicil of the parents will generally be the place of domicil . . . and children born on seas, take the domicil of their parents ; Story, Confl. Laws § 48. . . .

Domicil by choice is that domicil which a person of capacity of his free will selects to be such.

Domicil is conferred in many cases by *operation of law*, either expressly or consequentially. The domicil of the husband is that of the wife . . . Anderson v. Watt, 138 U. S. 694, 11 Sup. Ct. 449, L. Ed. 1078. A woman on marriage takes the domicil of her husband, and a husband, if entitled to a divorce, may obtain though the wife be actually resident in a foreign state . . .

Divorce is regulated by the law of the domicil of the parties ; [1895] A. C. 517. A domicil for this purpose requires both the animus and the factum [2] ; L. R. 1 H. L. Sc. 307 ; and the intention is itself a question of fact, to be determined by evidence, the declaration of the party not being conclusive ; [1892] 3 Ch. 180.

The domicil of a widow remains that of her deceased husband until she makes a change ; Story, Confl. Laws § 46 . . .

Commercial domicil. There may be a commercial domicil acquired by maintenance of a commercial establishment in a country, in relation to transactions connected with such establishments ; 1 Kent 182 ; Lau Ow Bew v. U. S., 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340 ; U. S. v. Chin Quong Look, 52 Fed 203. See Dicey, Dom. 341 ; The Dos Hermanos, 2 Wheat. (U. S.) 76, 2 L. Ed. 189.

There is such a residence in a country for purposes of trade as makes a person's trade or business contribute to or form a part of the resources of such country. The question is whether he is or is not residing in such country with the purpose of continuing to trade there ; Dicey Confl. Laws 737. The intention of remaining in the commercial domicil is the intention to reside and trade there for the present ; *id.* 738. Commercial domicil is not forfeited by temporary absence at the domicil of origin ; Lau Ow Bew v. U. S., 144 U. S. 63, 12 Sup. Ct. 517, 36, 36 L. Ed. 340 ; but if a person go into a foreign country and engage in trade there, he is, by the law of nations, to be considered a merchant of that country, and subject for all civil purposes, whether that country be hostile or neutral ; 3 B. & P. 113 ; 3 C. Rob 12 ; 1 Hagg. 103, 104 ; U, S, v. Gillies, I Pet. C. C. 159, Fed. Cas. No. 15,206 ; Murray v. The Charming Betsy, 2 Cra. (U. S.) 64, 2 L. Ed. 208 ; and this whether the effect be to render him hostile or neutral in respect to his *bona fide* trade ; 1 Kent 175 ; 3 B. & P. 113 ; 1 C. Rob. 249.

. . . *Change of domicil.* Any person, *sui juris*, may make any *bona fide* change of domicil at any time . . . And the object of the change does not affect the right, if it be a genuine change with real intention of permanent residence ; Cooper v. Galbraith, 3 Wash. C. C. 546, Fed. Cas. No. 3,193 ; Cas. v. Clark, 5 Mass. 70, Fed. Cas. No. 2,490 ; Catlett v. Ins. Co., 1 Paine 594, Fed. Cas. No. 2,517 . . . Domicil is not lost by going to another state to seek a home, but continues until the home is obtained . . . Where the parties had abandoned their domicil and were

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[2] The *factum* is the transfer of the bodily presence, and the *animus* is the intention of residing permanently or for an indefinite period. Ibid, s.v. "Domicil."

on their way to the future home, the former domicil was not lost before their arrival at the place of the new domicil . . . Until a new domicil is obtained, the old one is not lost ; Desmare v. U. S., 93 U. S. 605, 23 L. Ed. 959 . . . but is presumed to continue to until shown to have been changed ; Anderson v. Watt, 138 U. S. 694, 11 Sup. Ct. 449, 34 L. Ed. 1078 ; Desmare v. U. S., 93 U. S. 605, 23 L. Ed. 959.

To constitute a change of domicil, three things are essential: (1) Residence in another place ; (2) an intention to abandon the old domicil ; and (3) an intention of acquiring a new one ; or as some writers express it there must be an *animus non revertendi* and an *animus manendi*, or *animus et factum* . . .

The *factum* is the transfer of the bodily presence, and the *animus* is the intention of residing permanently or for an indefinite period.

In the acquisition of a new domicil, more is required than a mere change of residence ; there must be a fixed intention to renounce birthright in the place of origin domicil and to adopt the political and municipal status involved by permanent residence of choice elsewhere ; [1906] A. C. 56 ; 94 L. T. 33 (an Englishman who lived the greater part of each year for thirty years in Scotland) . . .

A native of the United States who had lived twenty-seven years in England, but always described himself as an American citizen, and had bought property in Baltimore in the hope of finally making his home there, though from the state of his health a voyage across the Atlantic was impracticable, was held not to have abandoned his domicil of origin ; [1904] A. C. 287. But a Scotchman who for thirty years had lived in Ceylon, where he was engaged in business, and who never spoke of any intention of taking up his residence in Great Britain, but frequently expressed his dislike for the Scottish climate and people, was held to have, *animo et facto*, abandoned his domicil of origin in Scotland and acquired a domicil of choice in Ceylon ; [1907] Sc. 333, Ct. of Sess. . . .

The law of the place of domicil governs as to all acts of the parties, when not controlled by the *lex loci contractus* or *lex rei sitæ* . . . Story, Confl. Laws § 423. [pp. 915-922]

ANIMUS REVERTENDI (Lat.). The intention of returning.

A man retains his domicil if he leaves it *animo revertendi*. . . . [p. 199]

Absent proof of jurisdiction by way of either domicil or legal residence in a 100 Stat. 2764, 102 Stat. 3534, 120 Stat. 2971, 121 Stat. 2487 "State" of the 68A Stat. 911, 73 Stat. 146, 74 Stat. 416 "United States," the Court is bereft of a jurisdictional nexus to the faculty of judicial construction of the municipal law thereof against respondent or respondent's property; to wit:

> Federal Courts are of limited jurisdiction, fixed by statute, and the presumption is against jurisdiction throughout the case. Grace v. American Central Ins. Co., 109 U.S. 278, 3 S.Ct. 207, 27 L.Ed. 932; Lehigh Mining Manufacturing Co. v. Kelly, 160 U.S. 327, 16 S.Ct. 307, 40 L.Ed. 444. In Roberts v. Lewis, 144 U.S. 653, 12 S.Ct. 781, 36 L.Ed. 579, the petition alleged the requisite diversity of citizenship

> and the answer denied each and every allegation of the petition. There was no proof of citizenship in the record. It was held that diversity of citizenship though properly alleged must be proved by plaintiff if denied by defendant; and if there is no evidence on that point the judgment must be reversed and the cause remanded. In Chase v. Wetzlar, 225 U.S. 79, 32 S.Ct. 659, 56 L.Ed. 990, jurisdiction depended upon certain property being within the jurisdiction of the District Court. Jurisdiction was properly alleged. A plea was filed denying this. It was held the burden of proving jurisdiction rested upon complainant. There was no proof that the property was within the jurisdiction of the court and the bill was dismissed. In McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135, the bill alleged that the matter in controversy exceeded the sum of $3,000, exclusive of interest and costs. This allegation was denied by the answer. After an exhaustive review of the previous authorities, it was held that the burden of proving the necessary jurisdictional facts rested upon complainant throughout the case. As this burden had not been sustained, the case was dismissed. To the same effect is KVOS, Inc., v. Associated Press, 299 U.S. 269, 57 S.Ct. 197, 81 L.Ed. 183.
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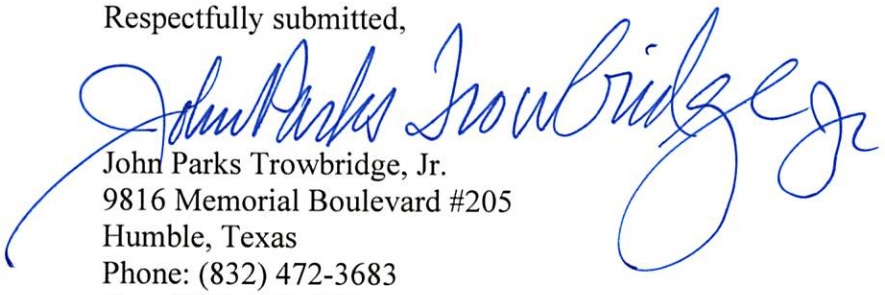
> The above cited decisions and authorities cited therein conclusively establish the rule that if the issue is presented in any way the burden of proving jurisdiction rests upon him who invokes it. . . . [Underline emphasis added.] *Town of Lantana, Fla. v. Hopper*, 102 F2d 188 (5th Cir.1989).

Whereas, there is no evidence that respondent is a member of the body politic of the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, or Commonwealth of the Northern Mariana Islands or domiciled in or a resident of the respective geographic area occupied by any aforesaid body politic, there is no evidence that respondent is a 106 Stat. 4672-4673 or 126 Stat. 1145 "person" or citizen or resident of the 68A Stat. 911, 73 Stat. 146, 74 Stat. 416 "United States," as presumed / impliedly alleged in the petition and this case must be dismissed for failure to state a claim upon which relief can be granted.

Date: July 17, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2017, I served a complete copy of MOTION TO DISMISS (12b6) by First Class mail on the following parties:

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