Dear Reader

What follows is an in-depth revelation of the explicit limitations imposed by Congress on the power of the IRS to issue summonses and conduct examinations.

It is in the form of legal briefs filed in the Sixth Circuit Court of Appeals in response to a district court denial of a "petition to quash" an IRS summons. That denial was issued only a few days after the filing of the petition-- without any hearing, without any comment, motion, brief or even appearance by the government, and, as will be seen, without any research into, or understanding of, the legal issues involved.

Don't be put off by the fact that these are "legal briefs"!

The issue involved, and the related body of law, are so simple and straightforward it is almost hard to believe that they have anything to do with the income tax and the IRS. You will find this material easy to read and easy to understand.

You will also find it extraordinarily important. As James Madison reminded us back when he and a few of his closest friends were laying down the rules outside the boundaries of which any governmental act is unlawful,

"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Welcome to the armory.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 06-1870

UNITED STATES,

Appellee,

v.

PETER E. HENDRICKSON,

Appellant

ON APPEAL FROM JUDGMENT OF DENIAL BY THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
HON. GERALD E. ROSEN, DISTRICT JUDGE PRESIDING

Peter E. Hendrickson
Proceeding Pro Se

Dated: July 28th, 2006

ISSUES ON APPEAL

In issuing its order, it appears the District court entirely and improperly disregarded Petitioner's uncontroverted affidavits, which constitute the only facts on the record in the matter under consideration. Although its order offers no explanation as to why my Petition was denied, the District court makes brief reference to the alleged "purpose" of the summons at issue. In so doing, the District court's order suggests that the court has mistakenly relied upon the statutory provisions as to allowed "purposes" for which summonses can be issued to set the limits as to the classes of persons in regard to whom such summonses can be issued. It therefore appears clear that the court has disregarded the fact that Congress has very explicitly and repeatedly (and, in light of the Fourth Amendment, necessarily) specified those classes; that those classes are very limited in scope; and that, according to the only facts in the evidence, Petitioner and Petitioner's company, Lost Horizons, are not within those classes and thus are not among those in regard to whom the IRS is provided summons authority. Thus, the court has both failed to accord the only facts in evidence their proper significance, and failed to apply the proper and relevant statutory language to the issue before it.

ARGUMENT

1. As Petitioner's petition clearly pointed out, and as this Court is aware, the Internal Revenue Code is not the law. It is a mere representation of certain of the statutes-at-large, and is only prima facie *evidence* of the law (See Title 1 USC 204). This applies to the language of 26 USC 7602, which must be utterly disregarded when the actual statutory language underlying that section of the code is invoked.

"In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

1 USC 204

"Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. Titles that have not been enacted into positive law are only prima facie evidence of the law. In that case, the Statutes at Large still govern."

United States Government Printing Office

"Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title 1 of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49."

United States House of Representatives Office of the Law Revision Counsel

2. As the United States Supreme Court has pointed out over the centuries, expressing what is certainly one of the most fundamental of American judicial doctrines,

"When the words of a statute are unambiguous, the first canon of statutory construction--that Courts must presume that a legislature says in a statute what it means and means in a statute what it says there--is also the last, and judicial inquiry is complete."

Connecticut National Bank v. Germain, 503 US 249 (1992).

The Preliminary Materials section of the current IRC reveals that the language of section 7602 contained therein which is invoked as the authority for the summons in question is a re-codification of section 3614, section 3615 (a), (b) and (c), and section 3632(a)(1) of the Internal Revenue Code of 1939. This language took its present form in 1954, but was unchanged in meaning, as is noted by the United States Supreme Court:

> *"The legislative history of the Code supports the conclusion that Congress intended to design a system with interrelated criminal and civil elements. Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code."*
> United States v. LaSalle National Bank, 437 U.S. 298 (1978), referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954)

[Note: The court's reference to section 3654 of the 1939 Code is now out-of-date with the Code's current derivation table, which, as observed above, refers to 3614, 3615 and 3632. However, 3654, now omitted, simply reflected the authority given to collectors to supervise, summon and examine "all officers of internal revenue" and their books, records, etc. in section 3163 of the Revised Statutes, and has since been replaced with 26 USC 7602(b) by way of the Tax Reform Act of 1982. This will be discussed in detail below. -PH]

Table A of the Appendix to the 1939 code- "Derivation of Internal Revenue Code" (copy attached) reveals, in turn, the statutes-at-large which these code sections reflect, and which remain the current law of the land.

The content of these statutes can be separated into three categories:

1. Providing appropriate parties with the authority to administer oaths to witnesses and take testimony;

2. Specifications as to the classes of persons in regard to whom summonses and examinations can be undertaken; and

3. Specifications as to the purposes for which such summonses and examinations can be initiated.

As Congress has, in fact, specified the classes of persons in regard to whom summonses may issue, the first consideration of the legitimacy of any summons is whether the person in regard to whom it is issued is within those classes (and whether the scope of those classes conforms to the Constitution, of course). Only if this is established as being the case does the question then turn to whether the summons has been issued for an authorized purpose, and other considerations by which Congress and the courts have further qualified the exercise of this authority.

The pertinent words of the statute specifying the classes in regard to whom summonses may issue (Section 3173 of the Revised Statutes, as amended in 1919 and re-enacted as the current law in the Revenue Act of 1926) could not be more clear-- anyone can understand them without difficulty:

> *"... And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person...";*

The draftsmen of the 1939 code, in representing this specification, do so with refreshing clarity:

> *"SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.*

(a) GENERAL AUTHORITY.—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.
(b) ACTS CREATING LIABILITY.—Such summons may be issued—
(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or
(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or
(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or
(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books."

Clearly, summonses can only issue in regard to those who have refused or neglected to render a timely list or return upon receiving notification of a requirement to do so, or those required to deliver a monthly or other return of objects subject to tax. Furthermore, that these unambiguous words express the ongoing will of Congress could also not be more clear. These words have been the law for more than 130 years. Congress has re-enacted these very words over and over again, and has declined to modify them on at least two separate occasions in which other modifications were made to the section of which they are a part.

3. Although the Respondent in this matter filed no documents prior to the District court issuing its decision, the same Respondent has filed a "Memorandum of Law in Opposition to Petition to Quash Summons", in two identical actions (one still pending before the same District Court judge whose ruling is being appealed here) which rests its arguments on an improper construction of the "purposes" language related to the summons authority. The contours of those same arguments clearly informed the decision of the District Court, and also appear to lie behind the issuing of the contested summons in the first place, and thus can be usefully addressed here.

In those "Memoranda", Respondent implicitly admits that I am not within the classes reached by the summons authority granted by the statute. It does so by making no effort to argue that I am within those actual classes, but instead tries to suggest that, effectively, *there are no classes,* in defiance of the clear words of the statute. That is, Respondent argues that the *purposes* for which Congress has allowed it to issue summonses concerning those in the specified classes should be misconstrued so as to make its mere curiosity the determinant of the scope of the class to which its summons authority applies, thus expanding the "class" into every human being on the planet.

Respondent suggests, for instance, that it (or its agent) is entitled to poke through records related to me in order to determine if I have committed *"offenses connected with the administration or enforcement of the income tax laws"*. Respondent offers no evidence, or testimony under oath or affirmation, to the effect that I HAVE committed such offenses. Instead, it offers a statement by IRS Special Agent Richard Daily in which Special Agent Daily indicates *an interest in determining if evidence to this effect exists*. Respondent thus slyly seeks to treat the provisions of IRC 7602(b) (reproduced

below) as providing the executive with an open-ended, undefined and unlimited authority to search through the papers and effects of, and records about, anybody for this purpose. That is, Respondent seeks to treat 7602(b) as furnishing the executive with the powers of a general warrant. General warrants-- one of the key offenses leading to the American Revolution-- are explicitly prohibited by the Fourth Article of Amendment to the Constitution of the United States of America:

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

Needless to say, a general warrant is impermissible regardless of the actual language which might be invoked in a governmental effort to claim such authority. But in this case, the language invoked is *explicitly* contrary to Respondent's misconstruction, anyway. Respondent is attempting to treat that language as meaning "offenses AGAINST the administration or enforcement of the income tax laws", or "offenses HINDERING, or INCONVENIENT TO the administration or enforcement of the income tax laws", in order to support its further suggestion that this language therefore authorizes executive action against anybody, just to see if "anybody" has committed any one or more of these undefined, or at least unspecified "offenses".

However, the language of 7602(b) is: *"...offenses CONNECTED WITH the administration or enforcement of the income tax laws"* (emphasis added). I have already pointed out in my initial petition that only someone *engaged* in the administration or enforcement of the income tax laws can commit an offense *connected with* the administration or enforcement of those laws. In this context (as, indeed, in any other)

"connected with" clearly and unambiguously means "involved in", "proceeding from", "incidental to", etc.. It does not mean "having an impact upon", nor could it. As noted above, even if Congress had elected to use such vague language as "having an impact upon" or its equivalent, and even had it intended to refer to *"offenses inconvenient to the administration or enforcement of the income tax"*, rather than *"offenses connected with the administration or enforcement of the income tax laws"*, in doing so it would have been legislating contrary to the purposes and provisions of the Fourth Amendment to its authorizing Constitution, by attempting to authorize a general warrant.

In fact, 7602(b) is the current code section reflecting the authority first spelled out in section 3163 of the Revised Statutes. The evolution of that language clarifies the meaning of the current section. In section 3163 we find:

> *"Every supervisor, under the direction of the Commissioner, shall see that all laws and regulations relating to the collection of internal-taxes are faithfully executed and complied with; and shall aid in the prevention, detection, and punishment of any frauds in relation thereto, and examine into the efficiency and conduct of all officers of internal revenue; and for such purposes he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel a compliance with such summons in the same manner as collectors may do.*
> *..."*

Paragraphs (a) and (c) of section 3654 of the 1939 code, by which section 3163 of the Revised Statutes was represented in that code, put it as follows:

> *"SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.*
> *(a) COLLECTORS.—Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.*

(b) DEPUTY COLLECTORS.—Every deputy collector shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such.

(c) INTERNAL REVENUE AGENTS.—Every internal revenue agent shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto."

Those engaged in the administration or enforcement of the income tax laws may well have invited and authorized broad scrutiny of their related activities, affairs, records and so forth at the mere initiative of the executive branch for which they work, as a part of their voluntary election to be so engaged. Americans such as myself, who are not so engaged, have made no such invitation or authorization.

In any event, it is not necessary to proceed with this point. However much Respondent, or anyone, seeks to conflate the language of 7602(b) with that of the actual statutes underlying, and controlling the meaning of, the code language presented at 7602(a), nonetheless 7602(b) expands only the PURPOSES for which the summons authority can be invoked, not the CLASSES OF PERSONS in regard to whom that authority can be invoked. The section says so plainly:

*"(b) **Purpose** may include inquiry into offense*
*The **purposes** for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws."*
(Emphasis added)

4. Respondent makes a different, but identically invalid attempt in its aforementioned "Memoranda" to evade the clear and necessary limitations placed in the law by Congress with its references to other **purposes** for which the summons authority

can be invoked, particularly referring to that involving *"ascertaining the correctness of any return"*. Again, those **purposes**, even without further discussion, DO NOT broaden the limited classes of persons concerning whom that authority can be exercised, which classes Congress has directly and explicitly defined. Nor could they, even had Congress been careless with its construction.

After all, even had the language referring to the purpose of *"ascertaining the correctness of any return"* which Respondent cites in its "Memoranda of Opposition" been produced in isolation-- without the related specifications as to how the authority mentioned was to be exercised, and in regard to whom-- that language would also amount to the authorizing of a general warrant, in defiance of the Fourth Amendment of the Constitution, and would thus be void. That language, more completely transcribed, includes the purposes of *"ascertaining the correctness of any return or for the purpose of making a return where none has been made"*. Were these mere **purposes** taken as establishing or broadening the **classes of persons** in regard to whom the summons authority can be exercised, that authority would be without limits. Every human being on the planet has either made a return, *"ascertaining the correctness of which"* would then serve as a pretext for unparticularized, warrantless scrutiny at the whim of a bureaucrat; or has NOT made a return-- the possible need for the making of which would then serve as the requisite pretext.

Happily, Congress was not sloppy, and the purposes provided for in the law do not stand in isolation, but are expressly circumscribed by the clear and unambiguous specification of those in regard to whom they can be invoked. Within those classes the bureaucracy has a free hand-- subject, of course, to judicial oversight as provided by

Congress in the law and as construed in U.S. v. Powell, 379 U.S. 48 (1964), and similar rulings by the Courts over the years.

(In the same vein, the provision by Congress of a petition-to-quash mechanism by which the jurisdiction of the district courts is invoked can only be for the purpose of exercising supervision over the executive, and does not constitute a reversal of burden of proof or presumption. The Fourth Amendment stands over the statutory scheme enacted by Congress within which this petitioning procedure operates. Quirks of this scheme notwithstanding, the executive becomes the initial moving party when it issues a summons in the first place, thus inviting objection, and bearing the burden of proving the propriety of its actions.)

5. IRS Agent Richard Daily, who initiated the instant action, actually has no personal knowledge of matters relevant to this contest, and asserts none. The issue here is whether I am among those classes of persons in regard to whom a summons may be issued. Whatever may be Daily's presentations as to WHY he wants to poke through my papers and effects (which Congress recognizes as including records kept about me by others) without the benefit of a warrant (much less a warrant properly supported by a credible allegation of personal knowledge of the commission of a cognizable offense, asserted at the risk of prosecution for perjury and identifying the particular place where evidence of that offense has been seen by the affiant, and its particular character) does not address that issue in any way whatsoever.

6. If I and my company are not among the classes about whom summonses can be issued under the authority reflected at 26 USC 7602, nothing else is relevant and this summons must be quashed. The only evidence in the record that is pertinent to this issue-- my affidavits, provided to the District Court with my petition, and to this Honorable Court with this brief-- establish that I and my company are NOT among those classes. This evidence remains uncontroverted, and must thus prevail; further, and in any case, the language of the statutes are perfectly clear, entirely support my position, and deny the government the authority to issue summonses in regard to me or my company.

PRAYER

Appellant prays this Honorable Court to:

A. Remand this case back to the District Court and command the District Court to order the summons quashed,

or

B. Alternatively, to enter an order quashing the summons,

and

C. Any such further relief to which appellant might be justly entitled.

Dated this the 28th day of July, 2006.

Respectfully submitted,

_____

Peter Eric Hendrickson

Attached for the convenience of the court:

- Sections 3163 and 3173 of the Revised Statutes in the original.
- Section 1115 of the Revenue Act of 1926-- the current Statute-At-Large establishing the relevant summons authority reflected in each Internal Revenue Code, including the current version-- containing, and re-enacting, the text of section 3173 of the Revised Statutes as amended by the Revenue Act of 1919.
- Sections 3614, 3615, 3632 and 3654 of the Internal Revenue Code of 1939
- Page 532 of the Internal Revenue Code of 1939: Table A- Derivation of Internal Revenue Code
- Affidavits of Peter E. Hendrickson

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 06-1870

PETER E. HENDRICKSON,

Petitioner-Appellant,

v.

UNITED STATES,

Respondent-Appellee

ON APPEAL FROM JUDGMENT OF DENIAL BY THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
HON. GERALD E. ROSEN, DISTRICT JUDGE PRESIDING

Peter E. Hendrickson
Proceeding Pro Se

Dated: September 21st, 2006

REPLY TO RESPONDENT-APPELLEE'S BRIEF

You can almost make out Jon Lovitz' Saturday Night Live character "The Liar" in the background, smirking, rubbing his hands and muttering, "Yeahhh, that's the ticket!" Recognizing that the detailed argument it offered against my position in two identical and concurrent proceedings in the district courts-- one of which is also now before this Honorable Court (though yet to be docketed), and one of which is now before the 9th Circuit Court of Appeals (case number 06-56129)-- has been proven entirely unsound, Respondent-Appellee now casts about and seizes upon another construct by which it hopes to defend its unlawful efforts against me in the instant action. Clearly, if Respondent, however wrong in fact, even believed in good faith that it had a sound legal basis for its actions, it would present it, defend it, and stick with it. Regardless, the horse to which Respondent has switched in mid-stream is as lame as the one on which it set out.

Respondent's current argument boils down to the following: The statutes don't count any more-- the 1954 IRC supplanted them, and since Respondent (or its client) reads the language of section 7602 in the 1954 IRC as expressing a limitless authority, the IRS has such authority. (In this regard alone, Respondent is being consistent in its efforts: It continues its attempt to evade the specifications Congress incorporated in the authority reflected at 7602, and treats that authority as a general power to poke through anyone's affairs, without probable cause, without a contract or other form of waiver-- in a word, without limit.)

The fact is, Congress DID circumscribe the summons/examination authority, properly confining its application to those already established as being involved in tax-

related activities by membership in the classes specified in the law. Respondent (or its client) chafes under this limitation, to be sure, but it is there nonetheless, and for good reason. Anything to the contrary would be of the abusive character of a general warrant, under which agents of the executive, upon noticing a shed on a man's property, for instance, would demand access, just in case something subject to a tax might be found inside.

(Respondent invites us to distinguish the instant case from considerations of this sort by suggesting that third-party records are not afforded legal protections against speculative fishing expeditions, but this is not only wrong for several reasons, it is also immaterial. The issue here is not the character of what is being sought, or where from, but the specific authority under which the seeking is done, and the limits incorporated into that authority. The summons at issue here invokes the law reflected at 7602 as its authorization to act. If Respondent wishes to assert that it needs no authorization to scrutinize third-party records, I suppose it can attempt that argument. But it does not.)

A complex series of peripheral assertions are incorporated into Respondent's new "argument" in an effort to confuse the issue, but they represent no increase in the breadth or depth of Respondent's position-- because there is none to be found. For instance, Respondent suggests that, since the tax system contains provisions for self-assessment, everyone on the planet has been made, willy-nilly, an income tax administrator and/or enforcer...?! This absurd argument (by the reasoning of which the fact that we are all expected to abide by local traffic laws when driving would make us all members of the local police force-- where do I go to collect my paycheck?) is merely a new version of

Respondent's ongoing effort to suggest that the classes specified by Congress in regard to the summons/examination authority is really one class: everyone. Significantly, though, it is also a tacit acknowledgement of the distinction Respondent seeks to deny. If the authority reflected by 7602 is to be taken as being as limitless, as Respondent suggests, whether one is involved in the administration or enforcement of the internal revenue laws would be entirely immaterial.

In a similar vein, Respondent ceaselessly refers to me as a "taxpayer" throughout its new "argument". This is not only an apparent effort to hypnotize the reader into assuming that this appellation is accurate, it is another sub-textual acknowledgement of the distinction Respondent overtly strives to deny. After all, Respondent is overtly proposing that simply being "any person" is sufficient in regard to the authority it wishes to invoke...

To address each thread of argument in Respondent's complex effort to mislead, misdirect, and, at bottom, plead for release from the limitations Congress, and the Framers, placed upon it, would be to largely repeat what has already been presented in my initial brief. Instead, I will rely upon that presentation in this regard.

However, I will briefly revisit, and expand upon, the discussion in that brief of the distinctions between the language of a mere code as it relates to that of the actual Statutes at Large, although with the caveat that Respondent's reliance upon its mistaken views of the significance of the 1954 code would not avail it even if its views could be defended. Were the language of the code to be taken as the language of the law, it would fail on Constitutional grounds (and this without regard to any distinction that might be argued

with regard to "third-party" records as opposed to "first-party" records, for 7602 is purported to reflect authority in regard to both varieties).

As is clearly indicated by the attached portion of Table II of the report on Derivations Of Code Sections Of The Internal Revenue Codes Of 1939 And 1954 published on January 21, 1992 by the Joint Committee On Taxation-- and as is plainly and repeatedly stated by the United States Supreme Court:

> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)..."*
> Donaldson v. United States, 400 U.S. 517 (1971)

> *"The legislative history of the Code supports the conclusion that Congress intended to design a system with interrelated criminal and civil elements. Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code."*
> United States v. LaSalle National Bank, 437 U.S. 298 (1978), referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954)

While the 1954 IRC did become the current official prima facie evidence of the law upon its "enactment", it did not replace and supersede the statutes it reflects. Enacted law informed by, and operating on, its own authority is not derived from anything-- it is enacted law informed by, and operating on, its own authority.

The United States Supreme Court offers us further guidance on the issue of statutory construction generally:

> *"By 1 U.S.C. 54(a), 1 U.S.C.A. 54(a) the Code establishes 'prima facie' the laws of the United States. But the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent."*
> Stephan v. United States, 319 U.S. 423 (1943)

The section 1 USC 54(a) to which the court refers is now 1 USC 204:

Title 1 § 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

We are reassured, in Darby v. Cisneros, 509 U.S. 137 (1993), that nothing has changed in the years since Stephan v. United States:

"We note that the statute as codified in the United States Code refers to "any form of reconsiderations," with the last word being in the plural. The version of 10(c) as currently enacted however, uses the singular "reconsideration." See this not supra, at 138. We quote the text as enacted in the Statutes at Large. See Stephan v. United States, 319 U.S. 423, 426 (1943) ("[T]he Code cannot prevail over the Statutes at Large when the two are inconsistent").

As has been previously observed (in my initial brief), the House Office of the Law Revision Counsel confirms the observation of the Supreme Court in United States v. LaSalle National Bank cited above, and the attached Joint Committee On Taxation's presentation of the sources of authority for the 1939 and 1954 code sections to the effect that Title 26 (the IRC) is not, in fact, enacted into "positive law":

"Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title 1 of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49."
United States House of Representatives Office of the Law Revision Counsel

Thus (again, as noted unambiguously by the United States Supreme Court in LaSalle), section 7602 is not legal evidence of the law, but is merely prima facie evidence of the Statutes at Large reflected therein-- an unfortunately distorted reflection. The actual language of the relevant Statutes at Large has been laid out in exhaustive detail in my initial brief. The refreshingly clear and unambiguous 1939 code representation of the pertinent portions of those Statutes will serve for purposes of review here:

> *"SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.*
> *(b) ACTS CREATING LIABILITY.—Such summons may be issued—*
> *(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or*
> *(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or*
> *(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or*
> *(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books."*

So, Respondent's extensive presentation of the history of the 1954 code, and 7602 therein in particular, is merely a waste of ink in a vain effort to make the code appear to be of greater significance than it clearly is, and to justify its attempt to claim a power both unauthorized by Congress and abhorrent to the Constitution under which it operates. Respondent's elaborate disputation of my reading of the history of the legislative intent now reflected at 7602(b) (apparently out of loyalty to its, *"We all work for the IRS now"*

fantasy), in a footnote to this exercise, is a similar effort at misdirection. My arguments do not rest on that legislative intent to any degree at all, regardless of the soundness of my analysis (in regard to which I will merely point out that Respondent neglects to observe that LaSalle National Bank is, in fact, a federal instrumentality, a monthly return filer, and a subordinate of the United States Treasury Department). As I have previously observed, 7602(b) is a **purposes** element, not a class element. 7602(b) adds to the reasons why a summons may issue in regard to a member of the specified classes-- it DOES NOT add to, expand, or make fuzzy the membership of those classes, the specifications of which are clearly and unambiguously spelled out in the law.

Wherefore Appellant again prays this Honorable Court to:

D. Remand this case back to the District Court and command the District Court to order the summons quashed,

or

E. Alternatively, to enter an order quashing the summons,

and

F. Grant any such further relief to which appellant might be justly entitled.

Dated this the 21st day of September, 2006.

Respectfully submitted,

_____

Peter Eric Hendrickson

Attached for the convenience of the court:

- Page 95 of the Joint Committee On Taxation Derivations of Code Sections of The Internal Revenue Codes of 1939 and 1954.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETER E. HENDRICKSON,	**§**	
	§	
Petitioner - Appellant,	**§**	
v.	**§**	
	§	**Case No. 06-1870**
UNITED STATES,	**§**	
Respondent - Appellee.	**§**	
	§	
	§	

PETITION FOR EN BANC RE-HEARING

- This Honorable Court has been the victim of a fraud and has consequently created an improper precedent with its ruling.
- The ruling issued in this case plainly conflicts with multiple United States Supreme Court precedents and Acts of Congress.
- The ruling in this case plainly conflicts with the provisions and purposes of the Fourth Amendment to the United States Constitution, and upholds a practice which is inherently arbitrary and capricious.

1. THIS HONORABLE COURT HAS BEEN LED TO ISSUE A FAULTY RULING DUE TO A FRAUD BY THE RESPONDENT IN THIS CASE

The underlying case here concerns my petition to the federal courts to have an IRS summons quashed, based on certain clear specifications in the relevant law as to exactly about whom such summonses can be issued. Those specifications establish that the summons in this case is improper. Unable to evade those clear specifications, and desperately (and corruptly) motivated to prevail in this matter, Respondent has settled on a demonstrably false argument which stands in open defiance of at least two United

States Supreme Court precedents expressly denying its validity, and in direct conflict with numerous acts of Congress.

In a nutshell, this argument proposes that the condensed summary of the statutes presented in the current "code"-- in which certain specifications in those statutes are, for the sake of the brevity and simplification which is the chief purpose of the codification effort, omitted-- is now itself the actual law. Respondent thus proposes that the "any person" used in the language of the code (by which is actually meant "any person subject to this authority as specified by the underlying statutes) means literally any person, and that the IRS thus has an effectively unlimited power to poke through the papers and effects of whomever it chooses, even where no relationship between the target and the government exists, nor any pretext of probable cause.

Unable to muster any actual evidence to support its false contention (or to overcome the voluminous and definitive evidence to the contrary), Respondent slyly makes reference in its brief to this Court to a D.C. Circuit Court case, in such a manner as to imply that the D.C. Circuit Court had issued a ruling in support of Respondent's contention about the law. THIS IMPLICATION IS FALSE.

The case-- never actually quoted by Respondent in the brief-- is Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000). Respondent's contention about the law was never an issue in this case-- it was neither litigated nor considered by the court. The only means by which this case can be distinguished in this respect from one chosen completely at random is a single sentence in a footnote declaring, without any support or explanation, that *"The IRC has been enacted as a separate code and is therefore positive law"*. Not only does the fact that the IRC "has been enacted as a separate code" NOT automatically

mean that it is therefore "positive law" in the sense of being legal evidence of the laws general and permanent (as would appear to be being taken for granted by the writer of this footnote and as has been expressly denied by Congress and the Supreme Court), but the writer goes on to contradict his own casual assertion in the very next sentence: *"Though both the Statutes at Large and the IRC could be said could be said to be authoritative here..."*; and then makes clear that the subject is not being seriously considered in the case, in any event: *"The difference is irrelevant to the outcome of the case..."*

This irrelevant, non-precedential case is the best that Respondent could offer in purported support of its faulty, last-ditch effort to overcome the actual provisions of the law pertinent to the underlying issue in this case. Nonetheless, apparently taking on faith that the case was an actual precedent, the three-judge panel adopted Respondent's faulty argument, referring to this irrelevant non-precedent as its chief authority for doing so in its one-paragraph disposition of the case.

This Honorable Court has thus been defrauded into an erroneous and unjust ruling in the instant case, and one which is already being cited by Respondent in other cases as a precedent supporting its flawed argument about the law. This is a cleverly contrived exercise of "garbage in, garbage out", and one with serious and harmful ramifications for the administration of justice both in this and other courts.

2. THE RULING OF THE THREE-JUDGE PANEL PLAINLY CONFLICTS WITH MULTIPLE UNITED STATES SUPREME COURT PRECEDENTS AND NUMEROUS ACTS OF CONGRESS

The decision of the three-judge panel in this case is plainly and squarely at odds with the explicit (and accurate) holdings by the United States Supreme Court that the

specifications concerning about whom a summons can issue under 26 USC 7602 ARE NOT "derived from", nor are to be measured against, the infinitely expansive language of section 7602 of the 1954 code as the Respondent in this matter, and the three-judge panel, have suggested. Instead, the language presented in 26 USC 7602 is merely a rendering of, and is subordinate to, the restrictive specifications as expressed in the IRC of 1939 and presented in detail in my petition and my briefs to this Court. As the court declares in Donaldson v. United States, 400 U.S. 517 (1971):

> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)..."*;

again, and more forcefully, in United States v. LaSalle National Bank, 437 U.S. 298 (1978):

> *"The legislative history of the Code supports the conclusion that Congress intended to design a system with interrelated criminal and civil elements. Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code."*, referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954);

and, in a more general, but relevant, observation:

> *"...absent [substantive]comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)."* Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985).

Respondent, undeterred and defiant, has nonetheless disingenuously suggested that the Supreme Court is simply wrong. It goes on to argue that the current version of the code (whether denominated as the 'IRC of 1986', '26 USC' or otherwise) is some kind of distinct, subordinate derivative of the 1954 code, and that it is the 1954 code which is to be referred to as the source of its authority. THIS IS SIMPLY NOT TRUE.

The language of the 26 USC (and/or that of the IRC of 1986) cannot be "derived from" the infinitely-expansive-language of section 7602 of the 1954 code, BECAUSE THEY ARE ONE AND THE SAME, and that language has always been nothing more than a distorted reflection of its actual underlying authority.

The current version of the code (whether denominated as the 'IRC of 1986', '26 USC' or otherwise) IS, and always has been, the IRC of 1954, which was simply "redesignated" as the "IRC of 1986" by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095. Such "redesignation" made no change in the legal status of the code-- neither distinguishing the "current" nominal code from the 1954 version, nor elevating the 1954 version in any fashion.

As is stated at 26 USC 7701(a)(29):

> *(29) Internal Revenue Code*
> *The term "Internal Revenue Code of 1986"* ***means this title****, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.* (Emphasis added.)

Since the "Internal Revenue Code of 1986" is, in fact, nothing but the 'Internal Revenue Code of 1954" with a new name (as noted above), this means that 26 USC itself IS the "Internal Revenue Code of 1954". The IRC of 1954 is not the "statute" from which language in 26 USC is derived or to which it is to be compared for its authority-- the two are one and the same.

Thus, when Congress explicitly declares 26 USC to NOT be enacted as "positive law":

> *"Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title 1 of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been*

enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49."
United States House of Representatives Office of the Law Revision Counsel

it is declaring the IRC of 1954 to NOT be enacted as "positive law". When Congress and the United States Supreme Court declare that titles not enacted as positive law are merely "prima facie" evidence of the law, and subordinate to underlying statute:

"By 1 U.S.C. 54(a), 1 U.S.C.A. 54(a) the Code establishes 'prima facie' the laws of the United States. But the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent."
United States Supreme Court, Stephan v. United States, 319 U.S. 423 (1943)

(The section 1 USC 54(a) to which the court refers is now 1 USC 204(a):

(b) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.),

they are declaring the IRC of 1954 to be mere "prima facie" evidence of, and to be subordinate to, OTHER LANGUAGE-- that being the language of the underlying statutes-at-large, which remain the relevant law.

This is why the Joint Committee on Taxation's 1992 'DERIVATIONS OF CODE SECTIONS' report does not even mention the '1986' code. With the sole exception of the occasional post-1954 enactment, the 1986 version is entirely and inherently addressed by the tables showing the derivation data for the 1954 code (which explicitly show section 7602 as being derived from the 1939 code). The same plain fact is similarly expressed in the current presentation of 26 USC, in the derivation tables of which the IRC of 1954 is not referenced at all. Just as in the Joint Committee's report, the current code

references its derivations-- particularly that of 7602-- as being directly from the 1939 code.

THE PLAIN, INCONTROVERTIBLE FACT IS THAT THE 1954 CODE LANGUAGE HAS ALWAYS BEEN, AND REMAINS TO THIS DAY, MERE PRIMA FACIE EVIDENCE OF UNDERLYING, FAR MORE RESTRICTIVE STATUTORY LANGUAGE TO WHICH THE DISTORTED EXPRESSIONS IN 7602 ARE SUBORDINATE. (The addition of subparagraph (b) to the code language of 7602, regardless of the reason for the addition, did not modify those statutory specifications. The sole effect of that addition was the redesignation of the code presentation of those specifications as 7602(a). Both Respondent and the three-judge panel have acknowledged this. Quoting from the ruling of the panel:

> *"...the government correctly notes that the language of 26 USC §7602 does not in fact differ from the Internal Revenue Code of 1954, § 7602..."*)

The ruling of the three-judge panel, based on the adoption of Respondent's inane proposition that the language of the 1954 code section 7602 is in any way dispositive of the issue in this matter, is in error. That proposition is plainly wrong, and plainly in conflict with the position of the United States Supreme Court and the United States Congress on the subject.

(It is also plainly ludicrous to suggest that Congress had embraced the restrictive summons protocol expressed in the 1939 code for more than 92 years, and then suddenly chucked it all and went feral in 1954. The Supreme Court agrees that this cannot be read into the language found in the IRC of 1954 regardless of the status of the code:

> *As we said in United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." Accord,*

Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289, 309 n. 12 (1975); Muniz v. Hoffman, 422 U.S. 454, 467-472 (1975); Fourco Glass Co. v. Transmirra Corp., 353 U.S. 222, 227 (1957). Fulman v. United States, 434 U.S. 528 (1978).)

Further, were this proposition about the ascendancy of the 1954 code sound, among many other absurd consequences, it would mean that Congress has thus removed natural persons from the ambit of much, if not all, of the internal revenue law. The actual statutes-at-large-- which, this proposition contends, were replaced by the code-- include "natural person" in the legal definition of "person" to be used in the law:

> *"And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person", as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person."*
> Revised Statutes of 1873, §3140.

The IRC of 1954, however, omitted natural person from the definition of the term that it presents, substituting "individual", "trust" and "estate":

> *(1) Person*
> *The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.*
> IRC of 1954 (26 USC), §7701(a)(1).

Since "individual" does not necessarily mean "natural person":

> *"As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons."*
> Black's Dictionary of Law, (2nd edition),

and since Congress must be taken to have made the change deliberately:

> *" '[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' "* United States Supreme Court, Russello v. United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983) (Quoting United States v. Wong Kim Bo, 472 F. 2d 720, 722 (CA 1972)),

it must be presumed that natural persons are no longer included in the meaning of "person" when that term is used in the internal revenue law.

I am, in fact, a natural human being. Thus, if the contention that the IRC of 1954 is now the law as presented is sound, and without regard to any other consideration, I am not within the class of "any person", either for purpose of the summons authority or any other provision of internal revenue legislation! Consequently, the three-judge-panel should have quashed the summons involved in this matter on that basis alone (and by virtue of a doctrine which all of America will find to be of intense interest...).

3. IF THE LAW REALLY DID ATTEMPT TO EXTEND THE SUMMONS AUTHORITY SO AS TO CONCERN "ANY PERSON", AS HAS BEEN CONTENDED BY THE RESPONDENT IN THIS CASE AND RELIED UPON BY THE THREE-JUDGE PANEL IN ITS RULING, IT WOULD BE INHERENTLY AT ODDS WITH THE PROVISIONS AND PURPOSE OF THE FOURTH AMENDMENT

If the authority to issue an IRS summons to examine books and records actually attempted to reach "any person", including those who had not knowingly and voluntarily waived his or her rights, that authority would be unconstitutional. Among other reasons, this is because in the case of most such persons there can be no lawful governmental interest in the product of such a summons other than for the purpose of a criminal investigation.

In the instant case, for example, there can, in fact, be no actual purpose for peering at records concerning me EXCEPT in hopes of contriving criminal charges of some kind. It cannot be for any "administrative" or accounting purpose. This is because the executive is explicitly commanded by statute to accept the amount of income declared on my filed returns for each of the years involved:

*"Provided, that any party, in his or her own behalf**,** or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation**,** the form and manner of which shall be prescribed by the commissioner of Internal Revenue,... ...the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid**, and the same so declared shall be received as the sum upon which duties are to be assessed and collected."***
─ Section 93 Revenue Act of 1862 (Emphasis added.)

This statutory provision finds expression in the provisions of section 3173 of the Revised Statutes laid out in my petition and briefs, as well as elsewhere throughout the overall body of internal revenue law. Some pertinent examples of this can be seen in the latest "code" reflections of the law, such as:

26 USC § 6201
(a) Authority of Secretary
The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:
(1) Taxes shown on return
The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title,

6 CFR 301.6203-1 Method of assessment.
...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...

and:

Sec. 6020. - Returns prepared for or executed by Secretary
(b) Execution of return by Secretary
(1) Authority of Secretary to execute return
If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
(2) Status of returns
Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

The nature of the authority reflected in the preceding code sections is helpfully illuminated by the following portion of the Internal Revenue Manual:

> *5.1.11.6.8 (03-01-2007)*
> *IRC 6020(b) Authority*
>
> 1. *The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):*
>   - A. *Form 940, Employer's Annual Federal Unemployment Tax Return;*
>   - B. *Form 941, Employer's Quarterly Federal Tax Return;*
>   - C. *Form 943, Employer's Annual Tax Return for Agricultural Employees;*
>   - D. *Form 944, Employer's Annual Federal Tax Return;*
>   - E. *Form 720, Quarterly Federal Excise Tax Return;*
>   - F. *Form 2290, Heavy Vehicle Use Tax Return;*
>   - G. *Form CT–1, Employer's Annual Railroad Retirement Tax Return;*
>   - H. *Form 1065, U.S. Return of Partnership Income.*

It will be observed that per the above specifications the authority of the Secretary to prepare or administratively manhandle returns upon which the assessment of taxes can be based DOES NOT extend to Form 1040 returns or others of the sort made by those who are NOT "*required to deliver a monthly or other return of objects subject to tax*". It will be further observed that these expressions of the law PRECISELY REFLECT AND HARMONIZE WITH the specifications of section 93 of the Revenue Act of 1862 quoted above, AND THOSE OF THE SUMMONS AUTHORITY OF R.S. 3173 AS AMENDED IN 1919 AND RE-ENACTED AS THE CURRENT LAW IN THE REVENUE ACT OF 1926 (and clearly re-iterated in the IRC of 1939, as extensively discussed in my briefs to this court) which I have invoked:

> *"... And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or*

> *contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person...";*

(It will also be observed that the proposition that the language of 7602(a) of the current code is to be taken as the complete and dispositive expression of the scope of the summons authority, as hungered after by the executive, DOES NOT HARMONIZE with these extensive expressions of the law found in the current code.)

Consequently, the ONLY actual purpose for which the executive could seek to snuffle through my papers and effects is in hopes of discovering evidence to support a perjury prosecution, that being the one mechanism provided in law for incentivising accuracy and honesty in the execution of annual returns by those not "*required to deliver a monthly or other return of objects subject to tax*". The executive cannot bypass the proscriptions and prescriptions of the Fourth Amendment by asserting that its interest is merely an "administrative" interest in the content of returns over which it actually has no "administrative" latitude; nor can it credibly maintain that its purpose is not the pursuit of a criminal charge when a criminal charge is the only actual interest it could have in the matter.

Further, even where the law DOES provide for the executive taking cognizance of the contents of a return, a summons of the sort involved in this case is inextricably intertwined with a potential for, or an interest in, the pursuit of a criminal charge of some sort. The fact that no Justice Department referral has been made prior to conducting a warrantless search (by the self-described "Criminal Investigation" division of the IRS, no less) is a ridiculous standard to apply to the question of such a search's lawfulness in light

of the Fourth Amendment. (For that matter, I am at a loss to imagine how the "discovery" which a summons of this sort seeks to accomplish is authorized even for a purely civil interest, in the absence of the establishment of jurisdiction and the meeting of similar procedural obligations.)

Thus, the Fourth Amendment to the United States Constitution, which was explicitly invoked both in my petition to the District Court and my briefs to this court, is unmistakably implicated in this case, and unmistakably stands against the validity of the summons involved. I have never waived any of my rights, and I insist that they be respected.

Neither the Respondent in this case nor the three-judge panel have suggested that I have waived my rights (although Respondent may have tried to suggest this by incessantly, gratuitously, and with no supporting evidence referring to me as a "taxpayer" throughout its brief...). Nor have either introduced into the record of these proceedings any averment or evidence of any contractual nexus between the government and me, or any other pretext for suggesting that this matter is somehow outside the ambit of the Constitution (unless the aforementioned incessant references to me as a "taxpayer" are intended to suggest something of the sort). In fact, there is no such nexus or other colorable pretext, as is made clear by way of the affidavit filed with my initial petition to the District Court, and as is re-iterated now.

Nor is any such nexus or pretext to be presumed:

> *Federal Rules of Evidence Rule 301. Presumptions in General Civil Actions and Proceedings*
>
> > *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof*

> *in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.*

In light of all of the foregoing, it is obvious that the summons authority simply cannot extend to "any person", as Respondent and the three-judge panel would have it, without being inherently unconstitutional. The summons authority can only encompass certain persons, and under certain circumstances, if it is to remain lawful-- and in fact, it does, as I have made clear in my petition to the district court and my briefs to this Honorable Court.

Respondent vainly struggles to evade this point by suggesting a distinction between "third-party" records and "first-party" records. This is nothing but an effort at misdirection however, for 7602 is purported to reflect authority relating to BOTH VARIETIES. That is, it is the language of 7602 that Respondent and its client IRS rely upon to conduct FIRST-PARTY fishing expeditions, as well as the third-party variety, using the same idiotic "any person" argument Respondent offers in this case. Since the prospect that "any person's " personal desk can be searched on the authority of a mere IRS summons would be clearly unconstitutional, either 7602's language is flatly unconstitutional on its face, or "any person" doesn't mean "any person". Respondent can't have it both ways.

The summons in this case, and Respondent's arguments, explicitly invoke the law reflected at 7602. If Respondent wished to assert that it needs no authorization to scrutinize third-party records, or has such authorization from another statute, I suppose it could have attempted that argument. But it did not.

SUMMARY

The ruling issued in this case is the consequence of a deliberate fraud perpetrated on this court, is squarely in conflict with multiple explicit Supreme Court precedents and acts of Congress; is in conflict with the Fourth Amendment; and is erosive of the rule of law. Further, the contention this ruling embraces is disharmonious with the body of related internal revenue law; is entirely and plainly contradicted by the language of the relevant statutes-at-large acknowledged by even the Respondent in this case to have stood undisturbed as the law on this subject for more than nine decades before the pretext on which this contention hangs appeared on the scene; and represents an effort to secure the cooperation of the judicial branch in the exercise of a power which is inherently arbitrary and capricious.

IN LIGHT OF THE FOREGOING, and in the interests of the best administration of justice and the defense and preservation of the rule of law in America, I respectfully pray this Honorable Court to rehear this matter en banc.

Dated this the 21st day of May, 2007

Respectfully submitted

_____

Peter Eric Hendrickson

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"...I appreciate your book greatly..."
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R. L., San Diego, California

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"...the best info I have ever read."
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Ron C. Rector, Broadview Heights, Ohio

"Thanks for all the work, research, and courage to act that you have put forth. I've been hammering away at understanding this ugly mess for years. The research and writings of so many other people, for which I've spent thousands of dollars, can't hold a candle to your laser..."
Val-David Smithson, Reno, Nevada

"Thank you for writing your fascinating and informative book. 'Cracking the Code' is the first book that I have read which offers a comprehensive explanation and viable resolution. Your book has been the key to unlocking the Tax-Code puzzle"
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"'Cracking the Code' has shocked and amazed me. Everything checks out... a more important book has never been written. Reading it is like taking the red pill in the movie 'The Matrix'. Thanks for showing me just how deep the rabbit hole goes."
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John J. Bulten, Tulsa, Oklahoma

"Your book was fabulous. It was concise, yet full of information. It was clear,... masterful. I am somewhat familiar with the tax/sovereignty issue, however, I have never encountered a work such as yours. Thank you for enlightening me..."
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