



Duped By The IRS?

Schiff: When Will The Government PROVE that the IRS is Authorized to Collect Taxes?

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On March 24, 2004 the federal government persuaded a grand jury to indict Irwin Schiff, Cynthia Neun and Larry Cohen to a 33 Count indictment charging various violations of the income tax and Social Security laws. Count 1 charged Schiff, Neun and Cohen with a conspiracy for "impeding, impairing, obstructing, and defeating, through deceitful and dishonest means, the lawful government function of the Internal Revenue Service of the United States." Count 17 charged Schiff with actions that "were designed to hide his income and assets from the Internal Revenue Service." However on March 25, 2005 Schiff filed a motion to dismiss both counts, since Schiff claimed the IRS was given no authority in the Internal Revenue Code do anything. Schiff also claimed: "While the office of the Commissioner of Internal Revenue was created by the Tax Act of July 1, 1862, Congress never passed a law establishing the Internal Revenue Service as an agency or department of the federal government." Therefore," Schiff argued, "how could the defendants have "impaired or obstructed" an agency that does not legally exist from doing anything?"

The Schiff motion pointed out that while earlier laws gave direct enforcement authority of income tax laws to the Commissioner of Internal Revenue "all such authority was removed from the 1954 Code, when Congress sought to bring the 1954 Code in line with the Constitution and what early Supreme Court decisions specifically held was the legal significance of the 16th Amendment - which was that it gave no new power of taxation to Congress." It is Schiff's view that in revising the 1939 Code, Congress essentially repealed the income tax - and removing any mention of the Commissioner in the 1954 Code was one-way Congress sought to achieve that objective.

Therefore, Schiff pointed out, "The Secretary of the Treasury is the only party given any authority in the Internal Revenue Code to assess and forcibly collect internal revenue taxes, however, sections 7701(11) & (12) of the IR Code authorize him to delegate his authority to any

officer, employee, or agency of the Treasury Department." "However," claimed Schiff, "this requires that the Secretary: (1) make a formal delegation of his authority to the Commissioner of Internal Revenue, and (2) publish that Delegation Order in the Federal Register. Without its 'publication' [in the Federal Register], claims Schiff, such a Delegation Order would have "no legal force and effect." It was Schiff's claim that since "The Secretary...never delegated any authority to the Commissioner ...and the government will not be able to produce any such delegation of authority" nor can it produce proof that any such delegation of authority "was ever published in the Federal Resister"; therefore all charges as contained in counts 1 and 9 "were fraudulently alleged by the Justice Department just on this ground alone."

Schiff even argued out that Section 6201(a) of the Internal Revenue Code bars the Secretary from even assessing income taxes, and attached an exhibit that he claimed proved his argument. In any case, Schiff argued that unless the government produced the two documents requested, "counts 1 and 17 must be dismissed for fraud and lack of subject matter jurisdiction."

Waiting approximately 4 weeks, the government on May 24, 2005 filed what was essentially a one-page response that claimed that Schiff's motion was "redundant" "frivolous and unsupported by law" and was that it was filed "untimely." Consequently the government stated it had "not addressed the argument in his motion point by point" and that, "If the court wishes a more detailed response, the government would request a reasonable opportunity to respond."

In his Reply, filed on May 27, 2005, Schiff pointed out that since his motion goes to the jurisdiction of the Court; it cannot be 'untimely.'" In addition, Schiff noted that he believed, "the government 'Doth protest too much,'" because supplying the requested two documents would take up far less of the government's and the court's time than "explaining to the court why it doesn't have to produce them," in a "more detailed response." In any case, Schiff argued, "However, if the government cannot produce the documents at issue - than clearly the court cannot have subject matter jurisdiction especially to counts 1 and 17 (for the reasons already stated), and with respect to all other counts as well."

Schiff essentially argued that if the government cannot produce the documents requested than counts 1 and 17 were obviously "steeped in fraud," and since "Fraud vitiates everything" (quoting several Supreme Court decisions) - "the entire indictment must be thrown out."

In ending his Reply, Schiff reminded the Court that it still had not ruled on Schiff's prior motions challenging its jurisdiction on four other grounds. Schiff stated, "In filing this motion Defendant is not conceding that this court has any jurisdiction to limit the motions he can file on jurisdiction or even set up schedules of any kind in connection with this action, since this court has yet to rule on whether or not it has subject matter jurisdiction in this case to do anything, other than to decide the issue of jurisdiction. As far as this pro se litigant knows the Supreme Court stated in *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, that once the question of jurisdiction is raised, 'it must be considered and decided, before any court can move one step further.' Therefore, since this court has not "decided" the issue of "jurisdiction, how can it legally move 'one step further' on anything? However, since this defendant is untrained in the law and court procedure, he does not know what to do about this situation, since he has so much other litigation to attend to."

For greater insight into this issue, the Tribune refers readers to www.paynoincome.com to read: Schiff's motion, the government's opposition to it, and Schiff's reply.

Schiff's criminal trial is scheduled to begin August 29, 2005 before District Court Judge Kent J. Dawson - that is if Judge Dawson does not first dismiss all of the charges against Schiff and the other defendants for lack of subject matter jurisdiction.