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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES	)	CRIMINAL INDICTMENT
	)	
	)	CASE NO, CR-S-04-1
Plaintiff	)	
V	)	MEMORANDUM TO SUPPORT
	)	DEFENDANTS' MOTION TO DISMISS
	)	ALL COUNTS INVOLVING INCOME
IRWIN SCHIFF, CYNTHIA NEUN	)	TAXES SINCE NO STATUTE MAKES
LAWRENCE COHEN, a/k/a/	)	DEFENDANTS OR ANYONE ELSE
LARRY COHEN	)	"LIABLE" FOR INCOME TAXES.
Defendants.	)	
_____	)	

COMES NOW the above defendant and moves this Honorable Court to dismiss from the indictments at issue all counts involving income taxes since no statutes makes defendants or anyone else "liable" for income taxes. Therefore this Court can have no subject matter jurisdiction – overlooking all of the other grounds as to why it has no such jurisdiction – to conduct a trial involving an alleged tax for which no statute makes anyone "liable."

As stated by the 2<sup>nd</sup> Circuit in *Botta v. Scanlon* 288 F.2d 504, 506 (1961):

Moreover, even the collection of taxes should be extracted only from persons upon whom a tax liability is imposed by some statute. (Emphasis added)

In *Higley v. Commissioner*, 69 F2d 160 the Court stated:

Liability for taxation must clearly appear from statute imposing tax.

Defendants would point out to this Court that the mere "imposition" of a tax does not automatically establish a "liability" as to who is *liable* to pay the tax so "imposed." This is clear from the following statutes.

For example, in connection with the federal wagering tax, section 4401(a) states in relevant part:

**Sec. 4401. Imposition of tax.**

**(a) Wagers.**

**(1) State authorized wagers.** There shall be *imposed* on any wager authorized under the law of the State... etc. etc. etc. (Emphasis added)

However, subsection (c) is captioned “**Persons liable for tax**” and provides:

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter. (Emphasis added)

Therefore, while subsection 4401(a) *imposes* the wagering tax, it is subsection (c) that says who is “liable” for, and who “shall pay the tax” imposed in subsection (a)

Similarly, in connection with federal tobacco taxes, subsection 5701(a) *imposes* tobacco taxes, but it is subsections 5703 (a) and (b) that provide that

The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by Section 5701... and ... Such taxes shall be paid on the basis of a return (Emphasis added).

Therefore, while subsection 5701(a) imposes federal tobacco taxes, it is subsections 5703(a) and (b) which state who is *liable* for those taxes and who is required *to pay* them.

Another example are subsections 5001(a)(1) and 5005(a) which deal with federal liquor taxes. While subsection 5001(a)(1) states that “There is hereby imposed on all distilled spirits...a tax,” it is subsection 5005(a) that provides that it is the distillers and importers who “shall be liable for the tax imposed thereon by subsection 5001(a)(1).”

So here again while subsection 5001(a) *imposes* federal liquor taxes, it is subsection 5005(a) that states who is *liable* for those taxes.

It is clear, therefore, that if one is “liable” for a federal tax, there is a statute that specifically says so. A further example of this is section 1461, which relates to the withholding of income tax from foreign nationals.<sup>1</sup> It states, in pertinent part, “Every person required to

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<sup>1</sup> This is not to be confused with W-4 wage withholding from resident Americans. W-4 wage withholding, in reality, constitutes a little understood, unapportioned direct tax on wages, which is imposed in section 3402, of Subtitle C. The income tax is imposed in section 1 of subtitle A. Few people realize that the withholding taxes that

deduct and withhold any tax under this chapter is hereby *made liable* for such tax and is hereby indemnified etc. etc. etc...” So even section 1461 refers to a “liability” in connection with withholding taxes. While Section 1 of the Internal Revenue Code “imposes” an income tax, unlike all of the examples shown above, no code section specifically makes anyone “liable” for the income tax “imposed” in section 1, by stating that “persons having income shall be *liable for* and shall pay income taxes,” or words to that effect. **And the United States will not be able to produce any such statute.**

As *further* proof of this, defendants have attached as Exhibit A an excerpt from the Index of the Internal Revenue Code published by the Research Institute of America. Note that this excerpt is captioned “Liability for tax” and directs you to some 30 different Code sections that make persons “liable” for various federal taxes. However an “income tax” is not included in that list. Additional proof that there is no section of the Internal Revenue Code that makes anyone “liable” for income taxes is shown in the two documents included in Exhibit B. Exhibit B1 is the Index entry for “Alcohol taxes.” Note it contains entries for: “liability for,” “payment of tax” and “penalties.” Exhibit B-2 is the Index entry for “Tobacco” taxes. Note that it too contains subentries for: “liability for,” and “penalties,” both “civil and criminal.” Exhibit C shows the Index entry for “Books and records” Note, there are entries for approximately 20 different federal taxes, such as: alcohol, tobacco products, petroleum products, and wagering taxes; however, again, there is no entry for income taxes. Exhibit D is the Index entry for “Income” taxes. Note there are approximately two columns of entries for that listing; however, unlike Exhibits B 1 and B 2, none of them show entries for “liability,” “payment,” or “penalties” with respect to income taxes. It should also be noted that both Exhibits B1 and B2 contain entries for “failure to file return or pay tax”; however, no such entry appears in Exhibit D with respect to income taxes. So there is obviously no provision in the Internal Revenue Code that provides penalties, either civil or criminal, for failure to file or pay income taxes, since, if there were, a similar entry would appear in the income tax section of the Index, but no such entry appears.

Also, the fact that there is no entry anywhere in the Index regarding a requirement to keep books and records for income tax purposes (as there are for other federal taxes) is also proof that the Code contains no provision making anyone “liable” for income taxes. If such a liability were

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are taken out of the paychecks of working Americans has nothing to do with income taxes and/or the 16<sup>th</sup> Amendment.

contained in the Code, the Code would also contain a provision requiring persons to keep books and records with respect to income taxes, so that the government could verify the accuracy of the reported income tax “liability” – but no such requirement for keeping books and records for income tax purposes appears anywhere in the Internal Revenue Code.

In addition, defendants have attached as Exhibit E, the “Privacy and Paperwork Reduction Act Notice” for the Federal Wagering Tax. Note it informs bookmakers at Note A, that they are “required” to provide the information requested on their Form 730 (at Notes B, C, D. & E.) In addition, at Note F, bookmakers are put on notice that they must pay the wagering tax pursuant to Code section 4401(a), and are made liable for the tax by Code section 4412 (at Note G). Also bookmakers are informed (at note H) that the information they provide on Form 730 may not be used against them. Compare this to the Privacy Act Notice (attached as Exhibit F) to that in a 1040 Booklet. Nowhere is the public given any comparable information. Nowhere in that 1040 Notice (unlike the Form 730) is the public told that they “must file” a 1040. Indeed the 1040 Notice does not even mentioned Form 1040. Nowhere does that Notice inform the public as to what Code section makes them “liable” for income taxes, or what law requires them “to pay” income taxes. In addition, unlike the Form 730 Notice which notifies bookmakers that the information on their Form 730 may not be used against them, the 1040 Notice informs the public (but buries it where the public would hardly notice it) that all the information they report on a 1040 can be used against them, by a variety of Federal and State agencies, including foreign governments.

The only place which might indicate that persons are required to file a 1040 is at Note A. It states: “Code sections 6001, 6011 and 6012 (a) and their regulations...say you must file a return or statement with us for *any tax* you are liable for” Why “any” taxes? Why doesn’t the 1040 Notice simple tell you the law that makes you liable for income taxes in the same manner as did the 730 Notice? The reason is obvious. No such “liability” exists: if it did, the 1040 Notice would have obviously identified it.

And since the 1040 Notice refers to regulations, defendants have attached as Exhibit G, two pages from the “Table of Parallel Authorities” which shows where the implementing regulations for various Title 26 statutes are listed. It can be seen that all of the Title 26 statutes involving: assessments (6201), the preparation of returns (6020), collection authority (6301-6303, 6321, 6331-6343, 7403, and 7608), and the authority to summons books and records

(7601-7606) are all shown as being contained in CFR 27, the regulations that apply to liquor, tobacco, and firearms taxes, not to income taxes which are contained in CFR 26. Thus it is clear that none of the enforcement provisions of the Code apply to income taxes, only to those excise taxes as are contained in CFR 27. This is consistent with the fact that there is no statute making anyone “liable” for income taxes, since why should there be regulations enforcing a “liability” that does not exist?

Based on all of the above, all charges involving Code Sections 26 U.S.C. 7201, 7203, 7206, and 18 U.S.C 371 must be dismissed, since none of the defendants could have evaded, failed to file, misled, or defrauded the Government out of a “tax” for which they or nobody else is made “liable” by any statute.

Dated

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed March 20, 2004

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Irwin A. Schiff, pro per