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11  
12 IN THE UNITED STATES DISTRICT COURT FOR THE  
13 DISTRICT OF NEVADA  
14

15 UNITED STATES OF AMERICA, )

16 Plaintiff, )

17 v. )

18 IRWIN A. SCHIFF, )

19 Defendant. )

Civil No. CV-S-01-0895-PMP (LRL)

**UNITED STATES' OPPOSITION TO  
SCHIFF'S "MOTION TO DISMISS THIS  
ACTION BECAUSE NO STATUTE MAKES  
THE DEFENDANT 'LIABLE' FOR THE  
TAXES AT ISSUE"**

20 The defendant Irwin A. Schiff filed, on September 3, 2004, a "Motion to Dismiss this Action  
21 Because No Statute Makes the Defendant 'Liable' for the Taxes at Issue" ("motion to dismiss"). Schiff  
22 argues that the Court lacks subject matter jurisdiction in this case because he contends that no statute  
23 makes him liable to pay federal taxes.

24 **INTRODUCTION**

25 This is an action to reduce to judgment federal income tax, penalty and interest assessments  
26 made against defendant Irwin A. Schiff for the years 1979 through 1985. On July 30, 2003, the United  
States filed a motion for summary judgment. Schiff was given extended time to brief and argue his  
opposition to the motion. In an Order, dated June 14, 2004, the Court granted the United States' motion  
for summary judgment in its entirety.

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1 On July 8, 2004, Schiff filed a motion in which he requests that the Court reconsider its decision  
2 on the motion for summary judgment. On August 16, 2004, the Court entered an Order denying  
3 Schiff's motion for reconsideration.

4 On July 12, 2004, the Court entered judgment in favor of the United States and against Schiff.  
5 On July 20, 2004, Schiff filed a motion to alter, amend, or vacate the court's judgment. The United  
6 States has opposed the motion to alter or amend and the Court has not yet ruled. <sup>1</sup>

7 On September 3, 2004, Schiff filed a "Motion to Dismiss this Action Because No Statute Makes  
8 the Defendant 'Liable' for the Taxes at Issue" ("motion to dismiss"). Schiff argues that the Court lacks  
9 subject matter jurisdiction in this case because he contends that no statute makes him liable to pay  
10 federal taxes.

#### 11 **QUESTION PRESENTED**

12 Whether the Court has subject matter jurisdiction to adjudicate this suit to reduce federal income  
13 tax assessments to judgment.

#### 14 **ARGUMENT**

15 This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 (jurisdiction over civil  
16 tax actions) and 1345 (United States as plaintiff), and pursuant to 26 U.S.C. §7401 and 7402. I.R.C. §  
17 7401 provides that an action to collect tax shall be commenced if the Internal Revenue Service  
18 authorizes suit, which it has in this case. I.R.C. § 7402(a) provides, in part, that "the district  
19 courts...shall have such jurisdiction...to render such judgments and decrees as may be necessary or  
20 appropriate for the enforcement of the internal revenue laws." The United States may sue to obtain a  
21 judgment for unpaid taxes, and, on getting a judgment, exercise the usual rights of a judgment creditor,  
22 including obtaining a judicial sale of property of the taxpayer to enforce the tax lien. 26 U.S.C. § 7403,

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23  
24 <sup>1</sup> In a recent decision in a related case, the United States Court of Appeals for the Ninth Circuit  
25 upheld a preliminary injunction which barred Schiff and his associates from promoting and  
26 selling Schiff's frivolous tax schemes and books. "Irwin Schiff has a long history of opposition to  
the federal income tax laws." *United States v. Schiff, et al.*, \_\_\_F.3d\_\_\_, 2004 WL 1770140 (9<sup>th</sup>  
Cir. August 9, 2004). The "defendants are selling a product that, if used, could expose their  
customers to criminal liability for tax evasion..."

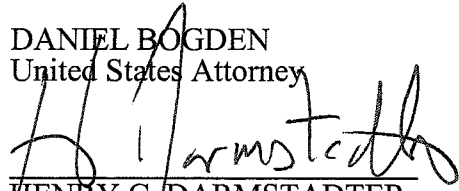
1 *United States v. Rodgers*, 461 U.S. 677, 682 (1983); *United States v. Stonehill*, 702 F.2d 1288, 1289  
2 (9th Cir.1983). Also see *United States v. Scherping*, 187 F.3d 796 (8<sup>th</sup> Cir. 1999). Schiff's contention  
3 that there is no statute making him liable for any income tax because the applicable statute only  
4 "imposes" a tax is not only nonsensical and frivolous but has also been rejected by this court and other  
5 courts in actions in which Schiff was a party. (See cases cited in support of United States' motion for  
6 summary judgment.)

### 7 CONCLUSION

8 Schiff is arguing that the Court cannot enforce the tax laws. This Court has jurisdiction to  
9 adjudicate this case under 28 U.S.C. §§ 1340 (jurisdiction over civil tax actions) and 1345 (United States  
10 as plaintiff), and pursuant to 26 U.S.C. §7401 and 7402. The Court should deny Schiff's motion to  
11 dismiss.

12 Dated this 16<sup>th</sup> day of September, 2004.

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