

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	
)	Civil No. CV –S-01-0895-PMP LR
Plaintiff,)	
)	
v.)	SUPPLEMENT TO
)	DEFENDANT’S MOTION TO
IRWIN A. SCHIFF,)	ALATER, AMEND, OR VACATE
)	THE COURT’S JUDGMENT OF
Defendant.)	JULY 13, 2004
_____)	

COMES NOW Defendant Irwin Schiff and moves this Court, in the interest of Justice, to allow Defendant to Supplement his Rule 59 Motion which he filed on July 20, 2004, with this supplement since Defendant has since uncovered evidence that all of the fraud penalties (and interest derived there from) were imposed in clear violation of law. The fact that the Government included such fraud penalties in its complaint, when it had to know that no such fraud penalties could apply to Defendant for the years 1980 – 1985 as shown below, was itself an act of fraud on the part of the Government, and should vitiate the Government’s entire complaint.

“Fraud destroys the validity of everything into which it enters,” *Nudd v. Burrows*, 91 U.S 426. “Fraud vitiates everything,” *Boyce v. Grundy*, 3 Pet. 210. “Fraud vitiates the most solemn contracts, documents and even judgments,” *U.S. v. Throckmorton*, 98 U.S. 61. Therefore the Government’s entire complaint in this action should be dismissed for fraud.

ARGUMENT

The fraud penalties at issue for the years 1980-1985 were allegedly imposed pursuant to the former provisions of Internal Revenue Section 6653. However, section 6653 based its fraud penalty, “on any underpayment (as defined in subsection (c) of tax required to be shown on a return...” And subsection (c)(1) defined an “underpayment” as “a **deficiency** as defined (in section 6211(a)(1)(A)).” Therefore, pursuant to Section 6653, no fraud penalty could legally be imposed pursuant to that statute **unless** a “deficiency” existed. However, no “deficiencies” existed for any of the years 1980-1985 that are at issue. Therefore, no statute authorized the fraud penalties at issue for those years. Section 6211(a)(1)(A) defines a deficiency as “the

amount shown as the tax by the taxpayer upon his return, **if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer** thereon, plus (B)...”(Emphasis added). Since, in filing his initial returns for those years, Schiff filed returns that did not show an “amount...thereon” no “deficiency” with respect to those returns could exist. In any case, Judge Dorsey ruled that Defendant did not comply with the terms of his probation *by filing returns* for those years. In addition, the Government claims that Defendant’s original returns were not considered by the IRS; therefore, Defendant’s original “zero” returns could not have generated “deficiencies” on a variety of grounds. The returns upon which the Government claims the assessments for the years 1980 – 85 are based, were based on Defendant reporting on those returns the *entire amount* of taxes that the Government claimed (on a document it submitted at the probation hearings) that the Defendant owed. So how could Defendant’s returns have generated “deficiencies” if the Government’s calculations for those years were correct? And the Government claims its calculations for those years are correct. In addition, Defendant was never sent “deficiency notices” for any of the years 1980-1985.

Proof that no “deficiencies” existed with respect to the tax years 1980-1985 is shown by the attachments on Sandra Davaz’s Declaration. The *first entries* on the documentation for each of the tax years 1980-1985 are, “Return filed and Tax Assessed,” and for each of those years, the taxes assessed are the amounts shown on the coerced returns at issue. There are no additional entries stating “Additional tax assessed by examination” (an entry which appears for the tax year 1979), which would have been shown if tax “deficiencies” for those years existed. Since these entries prove that no tax “deficiencies” existed for the years 1980-1985, no fraud penalties, pursuant to section 6653, for those years were applicable – as were imposed by the Government in the instant case. Therefore, the Court awarded a summary judgment to the Government involving approximately \$300,000 in fraud penalties (and substantially more than that in additional interest) **even though no law authorized such fraud penalties!**

Along these lines, Defendant pointed out, both in his Declaration (Paragraph 25) and in his Motion for Reconsideration (page 28), that Revenue Agent, Gerald A. Dragon stated in his Declaration (Para. 30) that he prepared a deficiency “incorporating only ‘the civil fraud penalties.’” Petitioner explained why no statute permitted a determination of a “deficiency” based solely on the imposition of fraud penalties. But this statement by Dragon is an admission that since he knew that no deficiencies existed for the years 1980-82, no fraud penalties, pursuant

to Code Section 6653, could apply.¹ Despite that, Dragon arbitrarily and spitefully calculated fraud penalties and imposed them capriciously and illegally.² Therefore, all of the fraud penalties for the years 1980-1985 – and the *additional interest penalties* they generated – are all erroneous as a matter of law.

Therefore, this Court is legally bound to alter, amend or vacate its Judgment entered on July 13, 2004 since it awarded the Government approximately \$300,000 in fraud penalties (and more than that in contingent interest penalties) pursuant to a statute that did not provide for such fraud penalties being imposed on this Defendant.

PREMISES CONSIDERED all such fraud penalties and contingent interest penalties must be vacated.

Dated: August 2, 2004

Submitted by:

Irwin A. Schiff, pro per

CERTIFICATE OF SERVICE

I certify that I have this day hand delivered a copy of the foregoing to Henry C. Darmstadter and G. Patrick Jennings, Trial Attorneys, Tax Division, in care of Denial G. Bogden, United States Attorney, District of Nevada, Lloyd D. George Federal Courthouse, 333 Las Vegas Blvd. South, Suit 5000, Las Vegas, Nevada.

Irwin A. Schiff

¹ If he didn't know that, how could he have had the expertise to do what he was doing?

² And Dragon simply has no Delegation of authority to determine fraud penalties on his own authority as was also pointed out in Defendant's Declaration and Motion to Reconsider.