

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**ROBERT L. SCHULZ**

**Plaintiff**

**MOTION TO QUASH  
SUMMONS  
DATED AUGUST 15, 2003**

**-against-**

**Miscellaneous Action:**

**UNITED STATES, INTERNAL REVENUE  
SERVICE, Anthony Roundtree**

**Defendants**

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**JURISDICTION**

1. The court has jurisdiction under 28 USC 1331 (civil action arising under the Constitution and laws of the United States), 28 USC 1346 (United States is a defendant), and 26 USC 7609 (h).

**FEDERAL QUESTIONS**

2. Whether the United States has jurisdiction: that is, whether the Summons should be quashed on the ground that it is repugnant to and violative of Article I, Section 8, Clause 17 of the Constitution and its implementing statute, 40 USC 255.
3. Whether the United States has an illegitimate purpose: that is, whether the Summons should be quashed because it was issued to interfere with the exercise by plaintiff of certain individual, constitutionally guaranteed Rights: the Right to Petition for a Redress of Grievances, including the Right of Redress Before Taxes, without infringement, harassment, retribution or prior restraint (1<sup>st</sup> and 9<sup>th</sup> Amendments); the Right to Peaceably Assemble and to associate with like minded people without infringement, harassment, retribution or prior restraint (1<sup>st</sup> and 9<sup>th</sup> Amendments); the Right to Speak Freely without infringement,

harassment, retribution or prior restraint (1<sup>st</sup> and 9<sup>th</sup> Amendments); the Right to Publish in newspapers, on the Internet, on compact discs and video tapes without infringement, harassment, retribution or prior restraint (1<sup>st</sup> and 9<sup>th</sup> Amendments); the Right to be Secure in Person, House, Papers and Effects Against Unreasonable Searches and Seizures (4<sup>th</sup> Amendment); the Right not to be a Witness Against Oneself (5<sup>th</sup> Amendment); the Right not to be Deprived of Liberty without Due Process of Law (5<sup>th</sup> and 14<sup>th</sup> Amendments); and the Right to be Informed of the Nature of an Accusation (6<sup>th</sup> Amendment): and the Right to Be Left Alone and Not To Be Harassed (9<sup>th</sup> Amendment).

4. Whether the United States has satisfied all administrative steps: that is, whether the Summons should be quashed on the ground it was issued without legal authority and does not satisfy all Administrative steps required by law and is, therefore, repugnant to and violative of plaintiff's constitutional right to due process under Article V of the Constitution.

#### **PRELIMINARY STATEMENT**

5. Since May 5, 1999, plaintiff has been engaged in a process of Petitioning the United States for Redress of Grievances relating initially to its abuse of its power to tax, and eventually, to its abuse of its debt-incurring/money-making, war-making and police powers.
6. The Record shows plaintiff's actions have been intelligent, rational, professional and respectful.
7. The Record shows the United States has refused to answer the Petitions for Redress, going back on its word to do so no less than five times.
8. On May 30, 2003, without identifying any offense, defendants issued a Summons to plaintiff Schulz (Exhibit LLL) that read<sup>1</sup> :

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<sup>1</sup> All Exhibits are annexed to the Supporting Affidavit, sworn to by Robert Schulz on September 11, 2003

“to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or **for the purpose of inquiring into any offense** connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.” (plaintiff’s emphasis).

9. On June 19, 2003, Schulz filed and served on defendant IRS a Motion to Quash (Exhibit OOO), returnable July 18, 2003. The grounds for that Motion To Quash included the fact that the May 30, 2003 Summons did not satisfy all required administrative steps, was not issued for a legitimate purpose – i.e., that it was issued in bad faith, and that the Summons lacked legal authority. The June 19, 2003 Motion To Quash included two supporting affidavits sworn to by plaintiff Robert Schulz, numerous exhibits (Exhibits A thru LLL) and a Memorandum of Law.
10. On June 23, 2003, defendant IRS (by its agent Terry H. Cox), served another Summons on plaintiff Robert Schulz (Exhibit MMM) and one on his wife, Judith Schulz (Exhibit NNN).
11. The June 23, 2003 Summonses, without identifying any offense, contained language identical to the IRS’s May 30, 2003 Summons, to wit:

“to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or **for the purpose of inquiring into any offense** connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.”

12. In addition, the June 23, 2003 Summonses asked plaintiff Robert Schulz and his wife Judith Schulz to turn over:

“All documents and records in your possession or control reflecting the receipt of taxable income by you for the year(s) 1040-December31, 2001 & December 31, 2002 ....”

13. On July 9, 2003, Schulz filed and served on the IRS a Motion to Quash the two new Summonses, (Exhibit PPP), returnable August 21, 2003. The grounds for that Motion To Quash included the fact that the June 23, 2003 Summonses were issued in bad faith and that the IRS lacked legal

authority to require plaintiff Schulz and/or his wife to turn over their documents, books and records. The July 9, 2003 Motion To Quash included an Affidavit by Judith Schulz and a Memorandum of Law, together with plaintiff Schulz's statement that he was re-alleging and repeating the arguments, background statements and the statements of fact and evidence set forth in his June 19, 2003 Motion to Quash and its supporting affidavits and memorandum of law.

14. On or about July 18, 2003, plaintiff Schulz was informed that the Court had had no response from the IRS regarding plaintiff's June 19<sup>th</sup> Motion to Quash.
15. On or about July 23, 2003, plaintiff Schulz and his wife each received a letter from, Edward Fickess, Associate Counsel for defendant IRS (Exhibit QQQ). The letter reads in part:

“...you did not provide the documents or testimony required by the [June 23, 2003] summons... Legal proceedings may be brought against you in the United States District Court for your failure to comply with the summons.”
16. On or about August 4, 2003, plaintiff Schulz and his wife replied (Exhibit RRR), advising Edward Fickess that the issue of compliance is a matter that is already before the United States District Court.
17. On or about August 21, 2003, plaintiff Schulz was informed that the Court had had no response from the IRS regarding plaintiff's July 9<sup>th</sup> Motion to Quash or the June 19<sup>th</sup> Motion to Quash.
18. On or about August 22, 2003, plaintiff filed and served a proposed Order to quash the Summons of May 30, 2003 and June 23, 2003. See Exhibit TTT.
19. On August 15, 2003, defendant IRS, by its agent Anthony Roundtree, served yet another Summons on plaintiff Schulz (Exhibit SSS), which was identical to the May 30, 2003 Summons, with three exceptions: 1) it includes the correct Social Security Number; 2) it includes a notice entitled “Notice to Third Party Recipient of IRS Summons”; and 3) it includes a note which reads:

“Please don't resubmit documents that were previously submitted in response to the summons issued on 5/30/03.”

**DEFENDANTS LACK JURISDICTION**  
(Argued under Point I in Memorandum of Law)

20. Defendants do not have jurisdiction: the Summons is repugnant to Article I, Section 8, Clause 17 of the federal Constitution and 40 USC 255.
21. Jurisdiction is a threshold question. For the defendants to execute a valid summons against Plaintiff, they must have bona fide Jurisdiction over Plaintiff. If the defendants do not, or cannot proffer the statutorily required proof of such jurisdiction, this court is bound to find in favor of Plaintiff.
22. As the Supreme Court held in The State of Rhode Island v. The State of Massachusetts, 37 U.S. 709, once the question of jurisdiction is raised "it must be *considered* and *decided* before the court can move one step further." "Jurisdiction *cannot be assumed* by a district court nor conferred by agreement of parties, but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence." Harris v. American Legion, 162 F. Supp. 700. [See also McNutt v. General Motors Acceptance, 56 S. Ct. 780.] [Italics added]. In Main V. Thibout, 100 S.Ct. 2552, the court held, "It is principle of law that once challenged, the court, agency, or person asserting jurisdiction must prove that jurisdiction to exist as a matter of law." In Foley Bros. Inc. Et al V. Filardo 336 U.S. 28, the court held, "Jurisdiction once challenged cannot be assumed and must be proven." "Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside." See Jaffe and Asher v. Van Brunt, S.D.N.Y.1994. 158 F.R.D. 278.
23. The Constitution is unambiguous about defining WHAT Congress is authorized to do and WHERE they can do it. The IRS cannot tax where the US cannot legislate.

24. Specifically with respect to “where” Congress enjoys legislative, i.e., police/taxing jurisdiction, the Constitution reads:

“To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;”

Constitution: Article 1, Section 8, Clause 17

25. The USC codifies the Constitutional requirement at Article I, Section 8, Clause 17 and proscribes the procedure and required documentation for the federal government to successfully assert jurisdiction inside one of the fifty states. To wit: 40 USCS § 255 clearly and specifically requires that a "notice of acceptance" is to be filed "with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." "Such lands," of course, referring to those lands that the federal government, through its agents, is claiming exclusive or concurrent jurisdiction over the people living thereon.

26. The text of § 255 concludes with the statement "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, *it shall be conclusively presumed that no such jurisdiction has been accepted.*" [Italics added]

27. Obviously, if the requirements of Article 1, Section 8, Clause 17 of the Constitution of the United States are not complied with, and/or if the procedural requirements of 40 USCS § 255 are not complied with, then no public servant who is acting as an agent of the United States, i.e. the federal government, has any bona fide authority whatsoever to attempt to force compliance with any federal law, rule, code, statute, etc. on anyone living in such an area that is not subject to any bona fide jurisdiction of the federal government.

28. In support of this rather obvious conclusion, the second paragraph of interpretive note 14 of 40 USCS § 255 says: "In view of 40 USCS § 255, **no jurisdiction exists in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section**, and fact that state has authorized government to take jurisdiction is immaterial. Adams v. United States (1943) 319 US 312, 87 L Ed 1421, 63 S Ct 1122." (plaintiff's emphasis).

**THE SUMMONS WAS NOT ISSUED FOR A LEGITIMATE PURPOSE AND  
INFRINGES ON PLAINTIFF'S CONSTITUTIONAL RIGHTS  
(Argued under Point II thru Point XVII in Memorandum of Law)**

29. To obtain enforcement of a summons, the IRS must first establish its "good faith" by showing that the summons: (1) **is issued for a legitimate purpose**; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS' possession; and (4) satisfies all administrative steps required by the United States Code. United States v. Powell, 379 U.S. 48, 57-58 (1964). (emphasis added).
30. The August 15<sup>th</sup> Summons interferes with plaintiff's Right to Petition the Government for a Redress of Grievances and other fundamental Rights, thereby obstructing justice, which is an illegitimate purpose for a Summons.
31. The Summons reads in relevant part:
- "You are hereby summoned and required to appear before Anthony Roundtree (Internal Revenue Agent) ID # 13-23874 an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or for **the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws** concerning the person identified above for the periods shown." (plaintiff's emphasis).

32. The Summons fails to allege any offense by plaintiff connected with the administration or enforcement of the internal revenue laws. The Summons fails to expressly state any legitimate purpose nor does it imply a legitimate purpose.
33. Summoning plaintiff's books, records, papers and other documents, without identifying an offense, merely because plaintiff has been seeking to hold the United States accountable to the Constitution's limitations on its tax, debt-incurring/money-making, war-making and police powers interferes with certain of plaintiff's constitutional Rights and is not a legitimate purpose.
34. See plaintiff's supporting Affidavit for the detailed evidence of plaintiff's Petitions for Redress of Grievances.

**THE SUMMONS WAS ISSUED  
WITHOUT LEGAL AUTHORITY**  
(Argued under Point XVIII in Memorandum of Law)

35. To obtain enforcement of a summons, the IRS must first establish its "good faith" by showing that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS' possession; and (4) **satisfies all administrative steps required by the United States Code. United States v. Powell, 379 U.S. 48, 57-58 (1964).**
36. The Summons fails to state any offense by plaintiff connected with the administration or enforcement of the internal revenue laws. While section 7602 (c) of Title 26 may authorize the Secretary of the Treasury to examine plaintiff's books and records, if any, it does so only in connection with an inquiry into any offense connected with the administration or enforcement of the internal revenue laws. The United States is prohibited by the 4<sup>th</sup> (Right to Privacy), 5<sup>th</sup> (Right not to help) and 6<sup>th</sup> (Right to know nature of accusation)

Amendments to the Constitution from merely saying to plaintiff, a citizen of the State of New York, “ Come in here with your books and records,” and compelling plaintiff to do so, without disclosing the nature of any wrongdoing by plaintiff.

37. This and other administrative and legal defects are argued in detail in plaintiff’s Memorandum of Law of even date and in plaintiff’s Status & Disclosure Affidavit of Material Facts of even date.
38. The Summons should be quashed on the ground it was issued without legal authority and does not satisfy all Administrative steps required by law. It is, therefore, repugnant to and violative of plaintiff’s constitutional right to due process under Article V of the Constitution. See plaintiff’s Memorandum of Law.

### **CONCLUSION**

39. Based on the above, and the facts and evidence in plaintiff’s affidavits, plaintiff respectfully requests an order:
  - a. quashing the IRS Summons issued August 15, 2003, and
  - b. permanently enjoining and prohibiting the United States from directly or indirectly contacting plaintiff Schulz and/or his wife Judith regarding any matter related to the Individual Income Tax laws, unless and until the United States properly responds to plaintiff’s Petitions for Redress of Grievances regarding the income tax system, which response shall include answers to the questions contained in Exhibit G and Exhibit ZZ annexed to the supporting Affidavit of even date, and
  - c. permanently enjoining and prohibiting the IRS from directly or indirectly contacting plaintiff Schulz and/or his wife Judith regarding any matter related to the Individual

Income Tax laws, unless and until the IRS properly responds to the list of 17 questions that begins on page 70 of the Memorandum of Law of even date.

d. for such other relief as to the court may seem just and proper.

DATED: September 11, 2003

ROBERT L. SCHULZ  
Pro Se  
2458 Ridge Road  
Queensbury, NY 12804  
(518) 656-3578

Sworn to before me this  
11<sup>th</sup> day of September, 2003

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Notary

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