

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

<hr/> ROBERT L. SCHULZ)	
)	
Plaintiff)	
)	
-against-)	No. 06-MC-131
)	
UNITED STATES; INTERNAL)	
REVENUE SERVICE,)	
)	
Defendants)	

**CORRECTED
DECLARATION #1 BY PLAINTIFF ROBERT L. SCHULZ**

I, ROBERT L. SCHULZ (“Schulz”), declare under penalty of perjury:

1. This Declaration, originally filed yesterday, November 1, 2006, was missing Exhibits B-D. I am the plaintiff in the matter captioned above, and I make this Declaration in support of the Petition to Quash IRS Summons. Exhibit A hereto is a copy of the Summons.

FACTS SHOWING IRS’S BAD FAITH

Schulz v. IRS, 395 F.3d 463 (2d Cir. 2005)(Schulz I)
Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005)(Schulz II)

2. This is the second attempt by the IRS to use IRS’s summons authority to forcibly obtain the information. In 2003, IRS agent Terry Cox summoned Schulz’s

personal and private books and records. (See Exhibit B attached hereto for a copy of Cox's 6/23/03 Summons.) In 2003, Schulz filed a motion to quash the Cox Summons in the USDC for the Northern District of New York, where the case was dismissed for lack of jurisdiction. However, the matter was appealed to the Court of Appeals for the Second Circuit, where Schulz obtained a significant measure of relief from IRS's infringement on his Rights as guaranteed by the 1st, 4th, 5th and 14th Amendments.

3. On January 25, 2005, the Second Circuit issued the first of its two decisions in the case. The Court affirmed the District Court's order, deciding that the judicial power of the federal courts under Article III of the Constitution did not extend to the case because Schulz had not and would not incur any injury unless and until the IRS used force to obtain the summoned information or until the IRS initiated an action against Schulz in District Court, under 26 U.S.C. section 7604(b), to compel compliance with the IRS summons. Exhibit C hereto contains a copy of the 2d Circuit's January 25, 2005 decision in *Schulz v. IRS*, 395 F.3d 463 (2d Cir. 2005)(*Schulz I*).

4. In effect, the Second Circuit held that the IRS had only taken the first step of a two-step enforcement program against Schulz, and until the IRS takes the second step, seeking a federal court order, requiring the IRS to prove the legitimacy of its request for Schulz's personal and private information, and giving Schulz an

opportunity to face his accuser and defend his actions, Schulz did not have to comply and the IRS could not use force to obtain the requested information.

5. The Second Circuit ruled that IRS Summonses amount to administrative *requests* that do not threaten any injury, have no force or effect unless the IRS seeks a federal court order to enforce them, and no consequences can befall a taxpayer, who refuses, ignores, or otherwise does not comply with the summons until that summons is backed by a federal court order. In addition, the Second Circuit held that any taxpayer subject to a court order under 26 U.S.C Section 7604 cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the summoned party's reasons or lack of reasons for so refusing.

6. On March 1, 2005, the Department of Justice moved to amend the Second Circuit's January 25, 2005 decision and order on the ground that, left undisturbed, the decision meant the general effectiveness and ability of the IRS to collect taxes would be seriously impaired.

7. On June 29, 2005, in a thirteen page decision (*Schulz II*), the Second Circuit not only denied DOJ's motion to amend the January 25, 2005 decision (*Schulz I*), the Court held that the Due Process principles being set down by the Court applied to all IRS administrative orders. See *Schulz II*, page 10. Exhibit D hereto contains a

copy of the 2d Circuit's June 29, 2005 decision in *Schulz v. IRS*, 413 F.3d 297 (2d Cir. 2005)(*Schulz II*).

8. However, rather than comply with the Second Circuit's rulings in *Schulz* to obtain the information by seeking a federal court order to enforce its 2003 summonses against Schulz, the IRS has apparently decided to evade the Second Circuit's ruling and avoid facing Schulz and his First Amendment arguments in District Court. The IRS is now attempting to obtain the information by issuing a third party summonses to Schulz's Bank. See Exhibits A for a copy of IRS Agent Addington's Summons, which is the subject of this Petition.

9. The IRS obviously expects the Bank to decide to turn over the summoned information to the IRS rather than risk a confrontation with the IRS by demanding of the IRS that it obtain a court order directing the Bank to turn over the information, or otherwise risk becoming embroiled in Schulz's dispute with the IRS.

10. Schulz argues here, as he did in the earlier case, that the Summons is an interference with and an infringement of his fundamental Rights under the 1st, 4th, 5th, 9th and 14th Amendments.

11. Just as there was no legitimate purpose behind the Summons by Cox in 2003, there is no legitimate purpose behind the current Summons by Addington.

12. The Summons represents continued harassment and impermissible retaliation against Schulz for exercising his Right to Petition.

13. The present Summons should be quashed, or alternatively, an evidentiary hearing should be held to determine the legitimacy of the Summons and the enforcement of the summons should be stayed until the underlying questions are fully determined.

28 USC 1746 Unsworn Declarations

I declare under of penalty of perjury that the foregoing is true and correct.

Executed on November 2, 2006

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