John Gary Given, Sr.
Michele Louise Given
[redacted]
Appearing pro se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

John Gary Given, Michele Louise Given PLAINTIFF -V- United States of America DEFENDANT _____	Case No._____ CIVIL SUIT FOR REFUND 26 USC 7422 (a)

Jurisdiction

1. The United States District Court, Central District of California, Eastern Division, has jurisdiction per 28 USC 1346 (a) (1) and 28 USC 1402 (a).

2. Congress recognized that taxes, collected or withheld by honest mistake as to the amount, as well as, any liability for the payment of such taxes, are to be treated as overpayments. Section 3770 (c) of the

1939 Internal Revenue Code (1943 Current Tax Payment Act, H.R. 2570, section 4(d). [26 USC 6401 (C), 26 CFR 301-6401-1 (b) (2003)]

3. Congress authorized the Secretary to allow these overpayments as credits against other liabilities in respect to internal revenue taxes and to refund the remaining funds. [26 USC 6402, 26 CFR 301.6402-1]

Allegations

4. Claim for Refund was timely and properly filed per the requirements of 26 USC 7422; 26 USC 6511; 26 USC 6532; 26 CFR 301.6532-1and 26 CFR 301.6402-2 and 3.

5. Notice of intent to deny claim for refund (Ref. No.2981822555), based on alleged frivolous argument, did not contain any relevant citation of case law or statutory reasons for denying the claim. Nor did that letter contain the required notice of right to appeal per 26 CFR 601.103(c) (3); 26 CFR 601.105(e); and 26

CFR 601.106(d) (2) (ii). Forms 2297, waiver of statutory notification, and 3363, acceptance of proposed disallowance, were not executed.

6. The required (certified mail) notice of disallowance was issued on January 22, 2002. That notice did not refute our position, or contain any substantiated reasons for denial of our claim. Nor was there a statement advising us of our right to appeal.

7. A letter requesting that our issues be reviewed by the appeals process was mailed to, and received by, the Director of Compliance Services on February 22, 2002. To date there has not been any response to our request.

8. Notice of assessment of frivolous penalties under 26 USC 6702 was issued on March 4, 2002 and is still pending.

9. Letter requesting extension of time to file suit [Form 907], per 26 CFR 601.103 (3), setting forth the reasons for our claim, was mailed to, and received by, the Director of Compliance Services and others, on June 8, 2003. To date there has been no response to our request.

10. This suit is based upon our "Request for Ruling or Determination Letter" attached to and made part of our request for refund. The questions presented have not been answered or the documentation provided therewith refuted by the United States.

11. The Legislative History of withholding on "wages" can be interpreted two ways. One: As a business excise tax levied upon the "wages" themselves, as the net income derived from business activities; the collection of which would be appropriate under the withholding provisions. Or two: As a collection method for tax liability incurred under Subtitle A on aggregate gross net income, for which such "wages" are only included as a part of the "total income" reported on line 22 of the Individual 1040 Tax Return. A tax upon either of those conditions would be an excise upon the privilege of receiving gain (income) from business activities. Whereas, a tax levied directly upon the "wages," as gross receipts, apart from any business activity, would be a "direct" tax under the Constitutional definition. Educational Films Corp. v. Ward, 282 U.S. 379; Pollock v. Farmers 158 U.S. 601, 625

12. The money withheld from our pay, as common law employees working for county government agencies, is not a "tax," but a collection method for taxes imposed by Subtitle A of the Internal Revenue Code. Therefore, such withholding of money does not create any tax liability under Subtitle A.

Baral v. United States, District of Columbia, No. 98-1667 (Feb. 22, 2000).

13. Title 26, Subtitle A, levies an excise tax upon the "net-income" of every citizen and resident or non-resident alien, as determined in accordance with sections 61, 62 and 63 of the Internal Revenue Code. ["above the line" vs. "below the line" deductions] JCS-3-01 (2001), Study Of Overall State of the Federal Tax System and Recommendations for Simplification, Volume II, page 30, No. 6, "Above the Line" deductions. Ware v. United States, Sixth Circuit, No. 94-1293 (1995); Alexander v. I.R.S., First Circuit, No. 95-1451 (1995)

14. Excise taxes are levied upon the use or employment of property, including labor, or the happening of a taxable event producing "gain", such taxes are levied upon "privileges," not rights

of ownership. United States v. Wells Fargo Bank, 485 U.S. 351, 355; United States v. Davis, 370 U.S. 65, 67; Tyler v. U.S., 281 U.S. 497, 502

15. Common labor, in the employ of another, is an inalienable right "To take, hold, and dispose or property, both real and personal." Therefore, absent the enjoyment of specific "privileges," common "labor for hire" cannot be made the subject of an excise, without infringing upon the right to contract. United States v. Morris, 125 F 322; Adkins v. Children's Hospital, 261 U.S. 525; Taxing the Exercise of Natural Rights, John M. Maguire, Harvard Legal Essays of 1934;

16. The "subject" upon which the Federal income tax operates is net-income, not gross income or annual receipts. Congressional Record of August 28, 1913, page 3844, Senator Cummins; Congressional Record of April 26, 1913, pages 505-506, Congressman Hull; Treasury Regulation 45 (1918), Art 21; Treasury Regulation 118 (1953), section 39.21-1 (a) and (b). Commissioner v. Tellier, 383 U.S. 687, 691; Pedone v. United States, 151 F. Supp. 288, 291, 294;

17. Congress may select the classification of “persons” upon which the excise is to operate, but once selected, each “person” coming within the selected classification must be treated upon like principles so that the tax operates with equality in relation to the object (subject) of the tax being imposed. Stebbins v. Riley, 268 U.S. 137, 142; Mills v. State of Maine, 1st Cir. No. 96-1973 (1997)

18. 26 USC 62(a) (2), section 22 (n) under the 1939 I.R.C, and Chapter 24 of the Internal Revenue Code of 1954, present a statutory presumption that everyone is “in the business” of earning gains and profits (net-income). United States v. Gilmore, 372 U.S. 39, 44; Noland v. C.I.R., 269 F2d 108, 111;

19. Such “presumptions” must be based on facts which afford some reasonable connection between the fact proved and the ultimate fact presumed. United States v. Romano, 382 U.S. 136, 139;

20. “Business” is a very broad term and may include things not normally considered to be “business,” however, each question must be decided independently based upon facts, not presumptions. The basis of our suit is the determination of our status under the Subtitle A

excise tax. If we are not "in business," as that term is used in common speech and the intent of Subtitle A, then our yearly receipts cannot arbitrarily be converted to net-income for purposes of the tax imposed by Subtitle A. "There must be gain, before there can be income". Commissioner v. Groetzinger, 480 U.S. 23; Conner v. United States, 303 F. Supp. 1187, 1191

21. The "legislative history" of sections 1, 3, 4, 61, 62, 63, 63(c), Part V, Part VII, sections 151 and 262, and Subtitle C of the 1954 Internal Revenue Code must be considered as a whole. For unless it can be concluded that Congress changed the "subject" of Subtitle A, from net-income to gross income, that net-income basis remains as the controlling factor in determining "taxable income". Train v. Colorado Pub. Int. Research Group v. United States, 426 U.S. 1, 2; Congressional Record of October 9, 1942, page 7987, Senator George, Chairman of the Senate Finance Committee. [Exhibit A]

22. The term "taxable income" is a word of arts. It was used to define that which was the "subject" of the tax, not that which was actually made the measure of the tax. The term "taxable income" was

used in 1913 to define the “entire net-income” as the subject of the Revenue Act, from which the personal exemption and itemized personal deductions were subtracted in order to establish the amount of net income actually subject to the tax. Congress did not change that meaning when they wrote section 63 of the 1954 Internal Revenue Code. H.R. 8300, Internal Revenue Code of 1954, House Report No. 1337, Subchapter B, Part 1, pages A-18 to A-20, Code sections 61, 62 and 63

23. It is a well-established principle that in taxation the “power to tax is the power to destroy,” therefore, caution is to be used by Congress in selecting the subjects, as well as, the classification of those upon whom the tax is made operable. Mccray v. United States, 195 U.S. 27, 55-61; Pittsburgh v. Alco Parking Corp., 417 U.S. 369

24. The appeals process under 26 CFR 601.106 (f) provides some of the rules governing the practice and conference procedures. 26CFR601.106 (f) (1), provides: Rule 1

"An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution."

Therefore, the classification of "persons," not in conformity with the intent and purpose of Subtitle A of the Internal Revenue Code, may cause that classification to become "suspect," or arbitrary and thus void of any authority. Schweiker v. Wilson, 450 U.S. 221, 236; Tanner v. Little, 240 U.S. 369, 382

Demands for Relief

We now pray that the court enter judgement in favor of plaintiffs and order defendants to:

1. Refund the taxes withheld, collected, and paid by mistake in the amounts of:

A. For the tax year 1997, [redacted]

B. For the tax year 1998, [redacted]

C. For the tax year 1999, [redacted]

Together with the interest allowed by 26 USC 6611 (a) (2) as applicable under 26 USC 6621

2. Extinguish respondent's claim for frivolous penalties under 26 USC 6702 (a), or prove to the court that our request for refund falls within the requirements of both subsections (1) and (2), as required.

3. Award plaintiff's reasonable litigation costs, as allowed by 26 USC 7430 (a), for respondent's failure to provide or allow a hearing before an Appeals Officer, as stated in allegation number 5.

4. Provide to plaintiffs a clear and concise instruction on the proper procedures, and requirements, for filling out and filing the W-4 certificate, so as to avoid mistakes. 26 USC 3402 (n) "Employee incurring no tax liability", would seem to cover the issue in compliance with the intent of 26 USC 6401 (c).

John Gary Given Sr

Date_____

.Michele Louise Given