Direct Challenge to Personal Authority

date: january 22, 2014
irs employee, d/b/a/ revenue personal
internal revenue service
880 n. reus street, suite 101
pensacola, florida 32501

purpose: verify authenticity of your authority
verified authenticated proof of claim
verified authenticated proof of authority
sworn under penalties of perjury

re: letter 2202 (do), originating with director of compliance for area – proposed examination for tax years (----)

dear irs employee:

after considerable review of the internal revenue code, treasury regulations and published internal revenue service policy, including the internal revenue manual, it appears that the proposed examination of my financial records exceeds venue and subject matter jurisdiction of the internal revenue service and that you may be operating under color of authority of government of the united states. I will address the bulk of the issues giving rise to concern for your authority in a decision request to be submitted to the internal revenue service national office or by initiating adversarial proceedings. However, preliminary evidences are useful.

in the internal revenue manual § [5.1] 11.9, which is currently posted on the internal revenue service web page, I notice that irs personnel do not have delegated authority to execute forms 1040, 1041 & 1120 “substitute returns” under provisions of 26 usc § 6020(b). It follows that if irs personnel do not have delegated authority to unilaterally execute forms 1040, 1041 and 1120, then these forms are not mandatory.

Next, consider that the pocket commission handbook, located in chapter 3 of internal revenue manual § 1.16.4. exhibit [1.16.4] 3-1, authorized pocket commission holders, lists irs personnel who are authorized to have pocket commissions. by cross-referencing to the delegation of authority to issue summonses, it appears that all irs personnel authorized to issue summonses are under the assistant commissioner (international). That being the case, your proposed examination is void and constitutes a sham proceeding.

To the best of my first-hand knowledge and belief, I have never received income from sources and activities subject to jurisdiction of the assistant commissioner (international). Further, part 14 of the internal revenue manual, “international,” at § 114.1, “compliance and customer service managers handbook,” reveals that examination, collection, criminal investigation and customer service functions of the internal revenue service are all categorized under the assistant commissioner (international). There is no corresponding categorization that might qualify as “domestic” operations.

If you will consult 26 cfr § 601.101, you will find that irs personnel have jurisdiction for examination and collection only within internal revenue districts; all other functions fall under jurisdiction of the foreign district director, now the assistant commissioner (international). The secretary of the treasury has never established internal revenue districts in states of the union, as required pursuant to 26 u.s.c. § 7621 and executive order #10289. therefore, you must be operating under presumption of assistant commissioner (international) jurisdiction. see particulars infra.

Given this evidence, all of which is published in the public record, I have concluded that it would be prudent to further investigate the extent of your authority, to discover what, if anything, you are empowered to investigate in the examination process. The investigation that you have initiated necessarily hinges on your own personal standing and authority, per ryder v. united states, 115 s.ct. 2031, 132 led.2d 136, 515 u.s. 177, I am required to initiate a direct challenge to authority of anyone representing himself or herself as a government officer or agent prior to the finality of any proceeding in order to avoid implications of de facto officer doctrine.
When challenged, those posing as government officers and agents are required to affirmatively prove whatever authority they claim.

In the absence of proof, they may (must) be held personally accountable for loss, injury and damages. See particularly, the former title 26 united states code (herein “usc”) § 7804(b), now published in notes following § 7801. per 26 usc § 7214(a), if and when its personnel exceed authority prescribed by law, or fail to carry out duties imposed by law, they are criminally liable. per 31 cfr part 1, appendix b of subpart c, paragraph 2, I am entitled to directly request evidence of an internal revenue service employee’s authority and/or liability: internal revenue service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the internal revenue service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the privacy act.

Therefore I respectfully demand that you provide me with certified copies of the following items:

1. your precise title (“revenue officer,” “revenue agent,” “appeals officer,” “special agent,” etc.). cite the section of the act of congress that created the office you occupy;
2. your constitutional oath of office, as required by 5 usc § 3331;
3. your civil commission as agent or officer of government of the united states, as required by article ii § 3 of the constitution of the united states and attending legislation;
4. your affidavit declaring that you did not pay for or otherwise make or promise consideration to secure the office (5 usc § 3332); and
5. your personal surety bond; and
6. documentation that establishes your complete line of delegated authority, including all intermediaries such as the assistant commissioner (international), beginning with the president of the united states.

These documents should all be filed as public records. see 5 usc § 2906 for requirements concerning filing oaths of office. In the event you do not have a personal surety bond, you may provide a copy of your financial statement, which you are required to file annually. Your financial statement will be construed as a private treaty surety bond in the event that you exceed lawful authority.

The following is a reasonably concise list of causes for challenging and requiring you to verify your authority and bond your action. The list includes authority references sufficient to provide notice and enable you to make inquiry reasonable under the circumstance.

1. After a review of my financial affairs and reasonably comprehensive study of the application of internal revenue laws of the united states, I do not believe that I am subject to or liable for any federal tax that requires me to keep books and records and to file tax returns. In spite of a diligent search, I have been unable to locate taxing and liability statutes, with implementing regulations, applicable to my income sources and activities. See the good faith and reasonable cause standard at 26 cfr § 1.6664-4 and the substantial authority standard at 26 cfr § 1.6662-4.
2. Court documents and published district and circuit court decisions verify that the internal revenue service is agent of the [federal] united states and not of the government of the united states of america (see 26 usc § 7402: “the district courts of the united states at the instance of the united states shall have jurisdiction …”), for distinction between the “united states” and the “united states of america” as unique and separate governmental entities, see historical and revision notes following 18 usc § 1001 and attorney general delegation orders to the director of the bureau of prisons, 28 cfr §§ 0.96 (custody of prisoners of the united states) & 0.96b (transfer of united states of america prisoners to united states custody). Court records therefore verify that internal revenue service personnel are agents of a foreign government and all internal revenue service claims are made on behalf of a government foreign to the united states and states of the union.
3. The internal revenue service, successor of the bureau of internal revenue, was not created by congress, as required by article i § 8, clause 18 of the constitution of the united states 2, so cannot
legitimately enforce internal revenue laws of the United States in states of the union. (see statement of IRS organization at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, 37 Fed. Reg. 20960, and the internal revenue manual 1100 through the 1997 edition; see also, United States v. Germaine, 99 U.S. 508 (1879); Norton v. Shelby County, 118 U.S. 425, 441, 6 S.Ct. 1121 (1886), and numerous other cases that reinforce the determination “there can be no officer, either de jure or de facto, if there be no office to fill.”)

4. Internal revenue districts have not been established in states of the union, as required by 26 U.S.C. § 7621 and executive order #10289, as amended. Therefore, internal revenue service incursion into states of the union for purposes authorized by chapter 78 of the internal revenue code are beyond venue prescribed by law. See also, 4 U.S.C. § 72, concerning the requirement for all departments of government to limit operations to the district of Columbia unless authorized to operate elsewhere by statute. The following compliant IRS venue and jurisdiction statements are published in 26 C.F.R. § 601.101: “Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue.” Otherwise, “the director, foreign operations district, [now assistant commissioner (international)] administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations…”

5. The internal revenue service is not the “delegate” of the secretary of the treasury, as that term is defined at 26 U.S.C. § 7701(a)(12)(a).

6. The internal revenue service operates in an ancillary or other secondary capacity under contract, memorandum of agreement or some comparable device to provide services under original authority vested in the treasury financial management service or some other bureau of the department of the treasury, and that such services extend only to government employees and employers, as defined at 26 C.F.R. §§ 3401(c) & (d). The authorization is essentially intragovernmental in nature (see 5 U.S.C § 301 for federal register publication exemption; see also, 44 U.S.C. § 1505(a)); it does not extend to private sector enterprise in states of the union.

7. Whenever someone subjected to examination challenges or otherwise contests fact and/or law issues, examination officers are required to resolve contested issues or refer them to the appeals office for resolution. As an alternative, the examination officer may request a national office technical advice memorandum that provides findings of fact and conclusions of law. See 26 C.F.R. § 601.105 generally.

8. Income tax liabilities must be assessed in compliance with requirements of 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1 before there is a tax liability. On request, the taxpayer against whom income tax liabilities are assessed is entitled to receive the assessment certificate or certificates. The law does not authorize computer-generated or other alternatives. See Hughes v. United States of America, 953 F.2d 531 (9th Cir.1991).

9. The secretary is required to issue 10-day notice and demand for payment after lawful, procedurally proper assessments are made (26 U.S.C. § 6303); there is no statutory or regulatory authorization for notice and demand for payment being issued prior to tax liabilities being assessed in compliance with 26 C.F.R. § 301.6203-1.

10. Prior to any adverse action to collect contested delinquent so-called “tax debts” (i.e., properly assessed liabilities), the current general agent of the treasury and the attorney general must authorize such action. See particularly, executive order #6166 of June 10, 1933, as amended, 5 U.S.C. § 5512, and 26 U.S.C. § 7401. (the general accounting office is listed as general agent of the treasury in notes following title 5 U.S.C. § 5512, but appears to have delegated certification of tax and other debts owed to government of the United States, most probably to the treasury financial management service or a subdivision thereof).

11. Any statutory lien “arising” under § 6321 of the internal revenue code is inchoate (unperfected) until there is a judgment lien secured in compliance with the federal debt collection procedures act (see chapter 176 of title 28, particularly 28 U.S.C. § 3201). Therefore, notices of federal tax lien, notices of levy and other such instruments utilized to encumber and convert private property are uttered instruments unless perfected by a judgment from a court of competent jurisdiction. See also, fifth amendment due process clause, clarified by relation-back doctrine (United States v. a parcel of land, buildings, appurtenances and improvements, known as 92 buena vista avenue, rumson, New Jersey (1993), 507 U.S. 111; 113 S.Ct. 1126; 122 L.Ed. 2d
12. Garnishment of wages and bank accounts may be executed only as prejudgment and postjudgment remedies in compliance with the federal debt collection procedures act, published as chapter 176 of title 28. see particularly, fuentes v. shevin, attorney general of florida, et al, (1972) 407 u.s. 67, 92 s.ct. 1983, 32 l.ed. 2d 556, detailed by the supreme court of the state of florida decision in ray lien construction, inc. v. jack m. wainwrite, (1977) 346 s.2d 1029, for particulars concerning required notice and opportunity for hearing.

13. All internal revenue service seizures where there is not a judgment lien in place are predicated on the underlying presumption that a drug-related commercial crime specified in 26 cfr § 403.38(d)(1) has been committed and that the seized property was being used in connection with or was the fruit of the crime. See particularly, delegation order 157, rule 41 of the federal rules of criminal procedure, and 26 usc § 7302 (property used in violation of internal revenue laws). The “in rem” action is admiralty in nature (26 usc § 7323) and presumes that there is a maritime nexus. see 26 usc § 7327 concerning customs laws.

14. Collateral issues and procedural essentials (nature and cause of action, standing of the internal revenue service, venue, subject matter jurisdiction generally, and substantive and procedural due process rights) are matters that must be documented in record when challenged. Therefore, the mandate for disclosure falls within substantive and procedural rights that cannot be avoided or otherwise passed over through technicalities or silence. u.s. supreme court decisions verifying these requirements are too numerous to list in this context.

15. The administrative procedures act and the federal register act require publication of organizational particulars and procedure in the federal register. See particularly, 5 u.s.c. § 552. The internal revenue service appears to not be in compliance with these mandates. Therefore, its personnel engaged in federal tax administration have a duty to affirmatively resolve organizational and other collateral and procedural issues when they are raised in the administrative forum.

16. Internal revenue service personnel acts not authorized by law and omission of duties imposed by law are criminal in nature (26 usc §§ 7214(a)(1), (2) & (3)), and whether knowingly or unknowingly, its personnel operating in states of the union, except with the possible exception of authority for enforcing drug-related customs laws (26 cfr § 403), are involved in a seditious conspiracy and racketeering enterprise. Where its personnel operate under color of authority of the united states, when in reality they are agents of a government foreign to the united states, offenses may be construed as treason and conspiracy to commit treason. see also, 18 u.s.c. § 912 concerning false impersonation of an officer of the united states.

17. There are essentials to any case or controversy, whether administrative or judicial, arising under the constitution and laws of the united states (article iii § 2, u.s. constitution, “arising under” clause). see federal maritime commission v. south carolina ports authority, 535 u.s. ___ (2002), decided march 28, 2002, and cases cited therein. the following elements are essential:

1. when challenged, standing, venue and all elements of subject matter jurisdiction, including compliance with substantive and procedural due process requirements, must be established in record;
2. facts of the case must be established in record;
3. unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination);
4. the law of the case must affirmatively appear in record, which in the instance of a tax controversy necessarily includes taxing and liability statutes with attending regulations (see united states of america v. menk, 260 f. supp. 784 at 787 and united states of america v. community tv, inc., 327 f.2d 79 (10th cir., 1964));
5. the advocate of a position must prove application of law to stipulated or otherwise provable facts; and
6. the trial court, whether administrative or judicial, must render a written decision that includes findings of fact and conclusions of law.

Knowing your precise title and the act of congress that created the office you occupy is essential to establishing your authority for the same reason it is essential to establish legitimacy of the internal revenue service. per article i § 8 clause 18 of the constitution of the united states,
congress is charged with responsibility for making all laws with respect to authority and operation of government of the united states. per united states v. germaine, 99 u.s. 508 (1879); norton v. shelby county, 118 u.s. 425, 441, 6 s.ct. 1121 (1886), and numerous other cases that reinforce the determination "there can be no officer, either de jure or de facto, if there be no office to fill." the constitutional oath of office is important enough that the first official act of congress in 1789 set requirements for the oath in place. see 1 stat. 23. The constitution of the united states mandates a constitutional oath of office in article vi, clause 3. the requirement for civil commissions is in article ii § 2, clause 2 of the constitution. requirements for civil commissions were particularized in marbury v. madison, 5 u.s. 137, 2 l.ed. 60, 1 cranch 137 (1803), and united states v. le baron, 60 u.s. 73 (1856). requirements for surety bonds arise from common law doctrine and statutory law. see particularly, 26 usc § 6803, 7101, 7102 & 7485, 26 cfr §§ 301.7101-1 & 301.7102-1 and 31 usc § 9303.

Collateral issues other than the above requests intended to document your personal standing will be addressed separately from this request.

You may provide the requested items within a reasonable period of twenty calendar days from receipt of this request. See the administrative procedures act for deadlines. In the alternative, you may recuse yourself from this case so long as you provide written notice. In the event you do not formally recuse yourself, you may be considered a party to any past or subsequent adverse action. You may withdraw any and all claims, demands and/or encumbrances issued directly or indirectly within the scope of your alleged administrative authority.

respectfully,

This my free will, voluntary act and deed true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver under my hand and seal, explicitly reserving all rights without prejudice;

By:__________________________________________

Sui Juris known as; John of the genealogy of Doe Bailor for JOHN DOE Bailee

DE FACTO defined: In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs, which must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position or status existing under a claim or color of right such as a de facto corporation. In this sense it is the contrary of de jure, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government de facto is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor de jure is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession. MacLeod v. United States, 229 U.S. 416, 33 S.Ct. 955, 57 L.Ed. 1260. A wife de facto is one whose marriage is voidable by decree, as distinguished from a wife de jure, or lawful wife. But the term is also frequently used independently of any distinction from de jure; thus a blockade de facto is a blockade which is actually maintained, as distinguished from a mere paper blockade. Compare De jure. "De facto doctrine" will validate, on grounds of public policy and prevention of failure of public justice, the acts of officials who function under color of law. People v. Davis, 86 Mich.App. 514, 272 N.W.2d 707, 710. As to de facto Corporation; Court; Domicile; Government; Merger, and Officer, see those titles. In old English law it means respecting or concerning the principal act of a murder, which was technically denominated factum. Black’s Law Dictionary Sixth Edition (page 416)