

**C**

LONG V. RASMUSSEN.C.Mont. 1922.

District Court, D. Montana.

LONG

v.


RASMUSSEN, Collector of Internal Revenue, et al.

**No. 97.**

May 29, 1922.

In Equity. Suit by Edna Long against C. A. Rasmussen, Collector of Internal Revenue for the District of Montana, and another. Decree rendered for plaintiff.

West Headnotes

**Evidence 157** 99[157 Evidence](#)[157IV](#) Admissibility in General[157IV\(A\)](#) Facts in Issue and Relevant to Issues[157k99](#) k. Relevancy in General. [Most](#)[Cited Cases](#)

On the issue of ownership of personal property between a claimant of the property and the collector of internal revenue, who had distrained it as the property of a taxpayer, tax lists returned by the taxpayer to the assessor of local taxes, including the property in controversy, are generally incompetent as res inter alios acta.

**United States 393** 125(2)[393](#) United States[393IX](#) Actions[393k125](#) Liability and Consent of United

States to Be Sued

[393k125\(2\)](#) k. Power to Waive Immunity orConsent to Suit. [Most Cited Cases](#)

A suit against the collector of internal revenue to enjoin sale by him under distraint proceedings of property claimed by plaintiff for taxes assessed against another is not a suit against the United States, but is against an individual who, as an officer in discharge of a discretionless ministerial duty, is committing trespass on plaintiff's property without authority.

**\*237** George F. Shelton, J. Bruce Kremer, L. P.

Sanders, and Alf C. Kremer, all of Butte, Mont., for plaintiff.

John L. Slattery, U.S. Dist. Atty., of Helena, Mont., for defendants.

BOURQUIN, District Judge.

Plaintiff alleges she owns and is entitled to possession of certain property distrained by defendant collector of internal revenue, to make certain 'distilled spirits taxes and penalties' assessed against one Wise, and she seeks to enjoin threatened sale and to recover possession.

The evidence in her behalf is that the property is the furnishings of a resort or hotel conducted by her, excepting an automatic organ is owned by her, and was in her possession when distrained by defendant. This is proof of plaintiff's ownership and right of possession, and imposes upon defendant the burden to justify the seizure by a preponderance of the evidence that Wise owns the property.

To that end he presents ambiguous circumstances only, viz. that Wise or his wife has some interest in the hotel building; that during plaintiff's tenancy of the building Wise once gave his address as at that hotel, had installed the automatic organ, and made payments upon it, and in 1917-1921 presented to the assessor of local taxes lists of property for taxation to Wise, including the hotel building and furnishings, which taxes were paid by him. These lists were admitted, subject to the anomalous objection that they be 'taken only for what they are worth.'

Being res inter alios acta, the better rule is that generally they are not competent evidence in actions involving title and ownership of property, and to which the list maker is not a party. In any event, the burden has not been sustained by defendant, and the finding is that at time of seizure and now plaintiff was and is owner and entitled to possession of the property. To dispose briefly of various suggestions, rather than contentions, the seizure threatening disruption of plaintiff's going business, infliction of uncertain damages, and irreparable injury, equity has jurisdiction, even as in like circumstances of wrongful attachment or execution, for that law affords no adequate rem-

edy. See [Watson v. Sutherland](#), 5 Wall. 79, 18 L.Ed. 580.

The suit is not against the United States, but is against an individual who, as an officer of the United States in discharge of a discretionless ministerial duty, upon plaintiff's property is committing without authority, contrary to his duty, and in violation of the due process of the Constitution and the revenue laws of the United States, positive acts of trespass for which he is personally liable. See [Philadelphia Co. v. Stimson](#), 223 U.S. 620, 32 Sup.Ct. 340, 56 L.Ed. 570; \*238 [Belknap v. Schild](#), 161 U.S. 18, 16 Sup.Ct. 443, 40 L.Ed. 599; [U.S. v. Lee](#), 106 U.S. 219, 1 Sup.Ct. 240, 27 L.Ed. 171; [Magruder v. Association](#), 219 Fed. 78, 135 C.C.A. 524. Congress has no power grant, and has not assumed to grant, authority to the defendant collector to distrain the property of one person to make the taxes of another. Perhaps it could, were the property in possession of the taxpayer, which is not this case. See [Sears v. Cottrell](#), 5 Mich. 253.

Section 3224, R.S. (Comp. St. Sec. 5947), that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court,' applies to taxpayers only, and who, thus deprived of one remedy, are given another by section 3226, R.S. (Comp. St. Sec. 5949), viz. an action to recover after taxes paid and repayment denied by the Commissioner. Nor are they limited to this statutory remedy denied by the Commissioner. Nor are they limited to this statutory remedy, but, after taxes paid, they may have trespass or other action against the collector. See [Erskine v. Hohnbach](#), 14 Wall. 616, 20 L.Ed. 745; [De Lima v. Bidwell](#), 182 U.S. 179, 21 Sup.Ct. 743, 45 L.Ed. 1041; [Pacific Co. v. U.S.](#), 187 U.S. 453, 23 Sup.Ct. 154, 47 L.Ed. 253.

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. The instant suit is not to restrain assessment or

collection of taxes of Wise, but is to enjoin trespass upon property of plaintiff, and against whom no assessment has been made, and of whom no collection is sought. Note, too, the taxes are not assessed against the property. This presents a widely different case than that wherein the person assessed, or whose property is assessed, seeks to restrain assessment or collection on the theory that he or it is exempt from taxation, or that for any reason the tax is illegal.

The distinction between persons and things within the scope of the revenue laws and those without them is vital. See [De Lima v. Bidwell](#), 182 U.S. 176, 179, 21 Sup.Ct. 743, 45 L.Ed. 1041. To the former only does section 3224 apply (see cases cited in [Violette v. Walsh](#) (D.C.) 272 Fed. 1016), and the well-understood exigencies of government and its revenues and their collection do not serve to extend it to the latter. It is a shield for official action, not a sword for private aggression. There is dictum to the contrary in [Sheridan v. Allen](#), 153 Fed. 569, 82 C.C.A. 522, but it is neither supported by the case it cites nor by any other brought to attention.

[Markle v. Kirkendall](#) (D.C.) 267 Fed. 500, tends to the conclusion herein. It is not improbable that section 934, R.S. (Comp. St. Sec. 1560), wherein it provides that property taken by an officer 'under authority of any revenue law' is 'irrepleviable,' is in 'custody of law,' and 'subject only to the orders and decrees of the courts of the United States having jurisdiction thereof,' contemplates the instant case. The collector assumed in good faith to distrain property he believes to be the taxpayer's. If he peaceably secures possession of it (for, if not the \*239 taxpayer's, the owner may lawfully forcibly prevent), he is not bound to deliver it to any chance claimant, nor is he subject to be deprived of it by replevin before trial.

The nontaxpayer owner, however, is free to bring any other proper action, the court to determine title, ownership, and possession, the collector having no power to do so, and the property 'subject only to the orders and decrees of the court,' to be by the court disposed of as justice requires. See [In re Fassett](#), 142 U.S. 486, 12 Sup.Ct. 295, 35 L.Ed. 1087; [De Lima v. Bidwell](#), 182 U.S. 180, 21 Sup.Ct. 743, 45 L.Ed. 1041. And this is the course in respect to any property in cus-



todia legis, aside from statute.

This trial demonstrating that plaintiff owns and is entitled to possession of the property, and that the defendant wrongfully seized it to make taxes owed by Wise, justice requires that the sale be enjoined and the possession restored to her.

Decree accordingly, and with costs.

D.C.Mont. 1922.  
Long v. Rasmussen  
281 F. 236, 4 A.F.T.R. 3561

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**KEYCITE****C** [Long v. Rasmussen](#), 281 F. 236, 4 A.F.T.R. 3561 (D.Mont., May 29, 1922) (NO. 97)**History**=> [1](#) **Long v. Rasmussen**, 281 F. 236, 4 A.F.T.R. 3561 (D.Mont. May 29, 1922) (NO. 97)**Citing References****Positive Cases (U.S.A.)****★★★ Discussed**

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- P** [3](#) National Iron Bank v. Manning, 76 F.Supp. 841, 843+, 48-1 USTC P 9306, 9306+, 36 A.F.T.R. 1416, 1416+ (D.N.J. Apr 13, 1948) (NO. CIV. 9935)
- P** [4](#) Logan Planing Mill Co. v. Fidelity & Cas. Co. of New York, 212 F.Supp. 906, 913+, 11 A.F.T.R.2d 1340, 1340+, 63-1 USTC P 9343, 9343+ (S.D.W.Va. Dec 20, 1962) (NO. CIV. 1058) "
- P** [5](#) Economy Plumbing & Heating Co., Inc. v. U. S., 470 F.2d 585, 589+, 200 Ct.Cl. 31, 37+, 31 A.F.T.R.2d 73-993, 73-993+, 73-1 USTC P 9382, 9382+ (Ct.Cl. Dec 12, 1972) (NO. 226-65) "

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- P** [7](#) Bullock v. Latham, 306 F.2d 45, 46+, 10 A.F.T.R.2d 5243, 5243+, 62-2 USTC P 9640, 9640+ (2nd Cir.(N.Y.) Jul 20, 1962) (NO. 284, 26703)
- P** [8](#) Rothensies v. Ullman, 110 F.2d 590, 592, 40-1 USTC P 9308, 9308, 24 A.F.T.R. 539, 539 (C.C.A.3 (Pa.) Mar 15, 1940) (NO. 7110)
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- ▶ [14](#) *Herrington v. U.S.*, 416 F.2d 1029, 1033, 24 A.F.T.R.2d 69-5694, 69-5694, 69-2 USTC P 9650, 9650 (10th Cir.(Okla.) Sep 30, 1969) (NO. 10179)
- ▶ [15](#) *Adler v. Nicholas*, 166 F.2d 674, 680, 48-1 USTC P 9205, 9205, 36 A.F.T.R. 827, 827 (C.C.A.10 (Colo.) Mar 05, 1948) (NO. 3536)
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- ▶ [19](#) *Long v. Kelly*, 100 F.Supp. 235, 236, 51-2 USTC P 9435, 9435, 41 A.F.T.R. 111, 111 (M.D.Ala. Aug 13, 1951) (NO. 224-E)
- ▶ [20](#) *Standard Nut Margarine Co. v. Rose*, 41 F.2d 385, 387 (N.D.Ga. Jun 02, 1930) (NO. 575)
- H [21](#) *Owensboro Ditcher & Grader Co. v. Lucas*, 18 F.2d 798, 802, 1 USTC P 228, 228, 6 A.F.T.R. 6668, 6668 (W.D.Ky. Apr 1927)
- C [22](#) *Szerlip v. Marcelle*, 136 F.Supp. 862, 863+, 56-1 USTC P 9118, 9118+, 48 A.F.T.R. 1091, 1091+ (E.D.N.Y. Nov 14, 1955) (NO. CIV. 11313)
- C [23](#) *Westheimer v. Collector of Internal Revenue*, 12 F.Supp. 20, 21, 35-1 USTC P 9147, 9147, 16 A.F.T.R. 742, 742 (S.D.N.Y. Feb 13, 1935)
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- C [26](#) *Bigley v. Jones*, 64 F.Supp. 389, 391, 46-1 USTC P 9161, 9161, 34 A.F.T.R. 980, 980 (W.D.Okla. Jan 17, 1946) (NO. CIV. 2346)
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- C [28](#) *Filipowicz v. Rothensies*, 31 F.Supp. 716, 719+, 40-1 USTC P 9250, 9250+, 24 A.F.T.R. 603, 603+ (E.D.Pa. Feb 16, 1940) (NO. 592) "
- H [29](#) *Ralston v. Heiner*, 21 F.2d 494, 495, 6 A.F.T.R. 6962, 6962 (W.D.Pa. Jan 21, 1927) (NO. 1750)
- C [30](#) *Excelsior Life Ins Co v. Thomas*, 49 F.Supp. 90, 91, 43-1 USTC P 9439, 9439, 30 A.F.T.R. 1210, 1210 (N.D.Tex. Feb 26, 1943) (NO. 786)
- ▶ [31](#) *Gordon v. U. S.*, 649 F.2d 837, 840+, 227 Ct.Cl. 328, 334+, 47 A.F.T.R.2d 81-1503, 81-1503+, 81-1 USTC P 9409, 9409+ (Ct.Cl. May 06, 1981) (NO. 310-79T)

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- ▶ [33](#) Shambaugh v. Scofield, 132 F.2d 345, 346, 42-2 USTC P 9826, 9826, 30 A.F.T.R. 593, 593 (C.C.A.5 (Tex.) Dec 15, 1942) (NO. 10298)
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- ▶ [36](#) Glenn v. American Sur. Co., 160 F.2d 977, 981, 47-1 USTC P 9220, 9220, 35 A.F.T.R. 1075, 1075 (C.C.A.6 (Ky.) Apr 01, 1947) (NO. 10302)
- C [37](#) Bershad v. Wood, 290 F.2d 714, 719, 7 A.F.T.R.2d 1467, 1467, 61-1 USTC P 9431, 9431 (9th Cir.(Ariz.) May 02, 1961) (NO. 16933)
- C [38](#) Bartell v. Riddell, 202 F.Supp. 70, 75, 9 A.F.T.R.2d 680, 680, 62-1 USTC P 9290, 9290 (S.D.Cal. Feb 05, 1962) (NO. CIV. 1286-61)
- C [39](#) Tamburri v. Graham, 127 F.Supp. 47, 47, 55-1 USTC P 9284, 9284, 46 A.F.T.R. 491, 491 (D.Conn. Oct 22, 1953) (NO. CIV. 4456)
- C [40](#) Reiling v. U.S., 1977 WL 1094, \*3, 39 A.F.T.R.2d 77-1031, 77-1031, 77-1 USTC P 9269, 9269 (N.D.Ind. Feb 04, 1977) (NO. L 76-19)
- C [41](#) Fine Fashions, Inc v. Moe, 172 F.Supp. 547, 549, 3 A.F.T.R.2d 1358, 1358, 59-1 USTC P 9418, 9418 (S.D.N.Y. Apr 21, 1959) (NO. 134-326)
- H [42](#) First Nat. Bank of Emlenton, Pa. v. U.S., 161 F.Supp. 844, 847, 1 A.F.T.R.2d 1802, 1802, 58-1 USTC P 9481, 9481 (W.D.Pa. Mar 28, 1958) (NO. CIV 504)
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- [47](#) Casey Federal Tax Practice s 2:46, s 2:46. Procedure for Injunctive Relief (2006)
- [48](#) Mertens: Law of Federal Income Taxation s 49E:30, s 49E:30. Distrainted Property Is Irrepleivable (2007)
- [49](#) Mertens: Law of Federal Income Taxation s 49E:32, s 49E:32. Distraint Is Limited to Property of

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- [50](#) CJS Internal Revenue s 771, s 771. Statutory prohibition of suits to restrain collection -- Taxes and suits within statutory prohibition (2006)
- C** [51](#) CJS Internal Revenue s 779, s 779. Proceedings -- Evidence (2006)
- [52](#) DOES SECTION 7426 PROVIDE EXCLUSIVE REMEDIES FOR A WRONGFUL LEVY?, 88 J. Tax'n 169, 177 (1998)

## Court Documents

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#### Appellate Petitions, Motions and Filings

- [53](#) Gregory J. EVERETT, Petitioner, v. UNITED STATES OF AMERICA, Respondent, Solicitor General of the United States., 2001 WL 34116970, \*34116970 (Appellate Petition, Motion and Filing) (U.S. Oct 10, 2001) **Petition for Writ of Certiorari** (NO. 01-1077) " ★ ★
- [54](#) Ronald J. ALLISON & Martha J. Allison, Petitioners, v. THE UNITED STATES OF AMERICA, et.al., Respondents., 2001 WL 34125483, \*34125483+ (Appellate Petition, Motion and Filing) (U.S. Apr 02, 2001) **Petition for Writ of Certiorari** (NO. 00-1516) ★ ★
- [55](#) Ralph Shirley STOWE, Petitioner, v. UNITED STATES OF AMERICA, Respondent., 1996 WL 33439592, \*33439592+ (Appellate Petition, Motion and Filing) (U.S. Jul 09, 1996) **Petition for a Writ of Certiorari** (NO. 96-393) ★ ★
- [56](#) William Ray SMITH, Petitioner, v. Carolyn LEONARD, Paul Hoggatt, United States of America, Respondents., 1995 WL 17048566, \*17048566+ (Appellate Petition, Motion and Filing) (U.S. Nov 20, 1995) **Petition for Writ of Certiorari** (NO. 95-874) " ★ ★
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- [59](#) EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, et al., petitioners, v. William E. SIMON, Secretary of the Treasury, et al. William E. SIMON, Secretary of the Treasury, et al., petitioners, v. EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, et al., 1975 WL 173684, \*173684+ (Appellate Brief) (U.S. Sep 22, 1975) **Brief for the Secretary of the Treasury, et al.** (NO. 74-1110, 74-1124) ★ ★ ★
- [60](#) EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, et al., Petitioners, v. William E.

- SIMON, Secretary of the Treasury, et al., Respondents. William E. SIMON, Secretary of the Treasury, et al., Petitioners, v. EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, et al., Respondents., 1975 WL 173683, \*173683+ (Appellate Brief) (U.S. Jul 18, 1975) **Brief for the Petitioners in No. 74-1110** (NO. 74-1110, 74-1124) ★★
- [61](#) Coit v. Green, 1971 WL 133577, \*133577 (Appellate Brief) (U.S. 1971) **Reply to Motions to Dismiss** (NO. 71-425) ★★
- [62](#) Allen v. Regents of the University System of Georgia, 1938 WL 39028, \*39028+ (Appellate Brief) (U.S. Apr 26, 1938) **Brief for Respondent.** (NO. 882) ★★
- [63](#) Miller v. Standard Nut Margarine Co., 1931 WL 32429, \*32429+ (Appellate Brief) (U.S. Dec 05, 1931) **Reply Brief for the Respondent** (NO. 251) ★★
- [64](#) Miller v. The Standard Nut Margarine Co., 1931 WL 32428, \*32428+ (Appellate Brief) (U.S. Nov 25, 1931) **Brief for the Petitioner** (NO. 251) ★★
- [65](#) Bennie Lee GRIFFIN, Plaintiff/Appellant, v. COMMISSIONER OF THE INTERNAL REVENUE, Defendant/Appellee., 1996 WL 33677424, \*33677424 (Appellate Brief) (2nd Cir. Nov 25, 1996) **Appellant's Reply to Government's Brief** (NO. 96-6225) ★★
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- [68](#) Bennie Lee GRIFFIN, Plaintiff/Appellant, v. L.K. COMSTOCK & COMPANY INC., Jacob Schreiber Internal Revenue Service Officer, Defendants/Appellees., 1994 WL 16182462, \*16182462 (Appellate Brief) (2nd Cir. May 23, 1994) **Brief and Appendix Filed Under Forma Pauperis ...** (NO. 94-6058) ★★
- [69](#) Bennie Lee GRIFFIN, Plaintiff/Appellant, v. L. K. COMSTOCK & COMPANY, INC., Internal Revenue Service and Revenue Officer Jacob Schreiber, Defendants/Appellees., 1994 WL 16182461, \*16182461+ (Appellate Brief) (2nd Cir. May 18, 1994) **Brief and Appendix of L. K. Comstock & Company, ...** (NO. 94-6058) ★★
- [70](#) Bennie Lee GRIFFIN, Plaintiff-Appellant, v. L.K. COMSTOCK & COMPANY, INC.; Jacob Schreiber, Internal Revenue Service Officer, Defendants-Appellees., 1994 WL 16182464, \*16182464+ (Appellate Brief) (2nd Cir. May 17, 1994) **Brief for Defendant-Appellee Jacob Schreiber** (NO. 94-6058) ★★
- [71](#) THE UNITED STATES OF AMERICA, Plaintiff-Appellee, v. John L. SASSCER, Defendant-Appellant., 1992 WL 12124950, \*12124950+ (Appellate Brief) (4th Cir. Jun 19, 1992) **Brief for Appellant John L. Sasscer** (NO. 92-5113) ★★
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- [73](#) Claudette M. LOPEZ, Plaintiff/Appellant v. John LACOKE, Associate Chief of the Internal Revenue Service, Defendant/Appellee., 2001 WL 34155073, \*34155073+ (Appellate Brief) (5th Cir. May



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- [74](#) Leonard GINTER and Norma Ginter, Plaintiffs-Appellant, v. INTERNAL REVENUE SERVICE, Defendant-Appellee., 1994 WL 16139987, \*16139987+ (Appellate Brief) (5th Cir. Jan 1994) **Brief for the Appellee** (NO. 93-2339) ★ ★
- [75](#) Leonard & Norma GINTER, We the People et al, Appellants, v. PUBLIC EMPLOYEES OF OUR INTERNAL REVENUE SERVICE, Appellees., 1993 WL 13104837, \*13104837 (Appellate Brief) (5th Cir. Nov 17, 1993) **Brief of We the People, As Appellants** (NO. 93-2339) ★ ★
- [76](#) Larry G. SOLOMON, Petitioner - Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent - Appellee., 1994 WL 16056845, \*16056845+ (Appellate Brief) (7th Cir. Jul 01, 1994) **Corrected Reply Brief for the Petitioner - ...** (NO. 94-1402) ★ ★
- [77](#) Floyd A. WRIGHT, Plaintiff - Appellant, v. Jerrrey R. MEYER; Joanne B. Duane; Charles O. Ros-sotti, IRS Commissioner; Martha Sullivan; K. Jones; P.L. Cunningham; Jerry J. Enomoto; County of Nevada; Nevada County Board of Supervisors; Nevada County Sheriff Department; Keith Royal, Sheriff; Sylvia Ruth Weeden;, Defendants - Appellees., 2002 WL 32112959, \*32112959+ (Appellate Brief) (9th Cir. May 28, 2002) **Appellant's Reply Brief** (NO. 01-17563) ★ ★
- [78](#) Steven BERESFORD, Ph.D., Appellant, v. INTERNAL REVENUE SERVICE, US Department of the Treasury (United States of America), Appellee., 2001 WL 34102286, \*34102286+ (Appellate Brief) (9th Cir. Jan 05, 2001) **Appellant's Reply Brief** (NO. 00-35650) ★ ★
- [79](#) In Re: Ronald J. ALLISON & Martha J. Allison, Debtors. Ronald J. ALLISON & Martha J. Allison, Plaintiffs/Appellants, v. UNITED STATES OF AMERICA, U.S. Internal Revenue Service, & the Boilermaker-Blacksmith National Pension Trust, Defendants/Appellees., 2000 WL 33995418, \*33995418+ (Appellate Brief) (9th Cir. Jul 24, 2000) **Joint Reply Brief of the Plaintiffs/Appel-lants ...** (NO. 99-35949) ★ ★
- [80](#) Ronald J. ALLISON & Martha J. Allison, Plaintiffs/Appellants, v. THE CITY OF FORSYTH, Rosebud County, Montana; Larry Burns & Larry's Service Center, Baker, Montana; the United States of America; & the U.S. Internal Revenue Service; and the Unknown Heirs, Devisees, As-signs, and Creditors of the City of Forsyth, Rosebud County, Montana; & Larry Burns & Larry's Service Center, Baker, Montana; & the United States of America; & the U.S. Internal Revenue, 1999 WL 33622978, \*33622978+ (Appellate Brief) (9th Cir. Nov 22, 1999) **Joint Reply Brief of the Plaintiffs/Appellants ...** (NO. 99-35708) ★ ★
- [81](#) Richard S. ABERLE, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Re-spondent-Appellee., 1998 WL 34301704, \*34301704 (Appellate Brief) (9th Cir. Jun 15, 1998) **Brief for the Appellee** (NO. 98-70096) ★
- [82](#) Susan M. SOLIVAN, In Propria Persona, Appellant/Complainant, v. B. RODRIGUEZ, et al., Ap-pellee/Defendants., 1998 WL 34104769, \*34104769 (Appellate Brief) (9th Cir. Jan 27, 1998) **In-formal Appeals Brief Filed in Propria Persona** (NO. 97-17252) ★ ★
- [83](#) Ernest SOLIVAN, In Propria Persona, Appellant/Complainant, v. Randy K. HARPER, et al., Ap-pellee/Defendants., 1997 WL 33556061, \*33556061 (Appellate Brief) (9th Cir. Dec 09, 1997) **In-formal Appeals Brief Filed in Propria Persona** (NO. 97-16719) ★ ★
- [84](#) John Earl: TOMLINSON, sui juris Appellant/Demandant, v. Allen Nailor AGENT, Irs & Jose Melendez Treasury Agent Appellees/Defendants., 1996 WL 33486900, \*33486900+ (Appellate Brief) (9th Cir. Jun 19, 1996) **Appellants reply brief** (NO. 96-55022) ★ ★

- [85](#) Scott R. PHILIPS, Petitioner/Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent/Appellee., 1996 WL 33468978, \*33468978 (Appellate Brief) (9th Cir. May 06, 1996) **Informal Brief of Appellant** (NO. 96-70113) " ★ ★
- [86](#) John EARL: Tomlinson, sui juris, Appellant/Demandant, v. ALLEN NAILOR AGENT, IRS & Jose Melendez Treasury Agent, Appellees/Defendants., 1996 WL 33488176, \*33488176+ (Appellate Brief) (9th Cir. Apr 18, 1996) **Appellants opening brief** (NO. 96-55022) " ★ ★
- [87](#) Douglas B. HOOPER, Respondent - Appellant, v. UNITED STATES OF AMERICA, and Joseph Eidelberg, Revenue Officer of the Internal Revenue Service, Petitioners - Appellees., 1995 WL 17065861, \*17065861+ (Appellate Brief) (9th Cir. Aug 11, 1995) **Appellant's Brief** (NO. 95-35565) ★ ★
- [88](#) Kimberly A. CAMBERN, v. UNITED STATES., 1995 WL 17066217, \*17066217 (Appellate Brief) (9th Cir. Jun 01, 1995) **Appellant's Opening Brief to Commence Appeal** (NO. 95-35334) ★ ★
- [89](#) William R. SMITH. Nontaxpayer, Appellant/Petitioner, v. Carolyn LEONARD, et al., Appellees/ Respondents., 1995 WL 17077043, \*17077043 (Appellate Brief) (9th Cir. Apr 03, 1995) **Appellant's Informal Reply Brief** (NO. 94-35901) ★ ★
- [90](#) William R. SMITH, Plaintiff-Appellant, v. Carolyn LEONARD, Paul Hoggatt, and United States of America, Defendants-Appellees., 1995 WL 17077044, \*17077044+ (Appellate Brief) (9th Cir. Mar 23, 1995) **Brief for the Appellees** (NO. 94-35901) ★ ★
- [91](#) Darrel A. TRAVIS, Plaintiff/Appellant, v. INTERNAL REVENUE SERVICE AGENTS CHAD CLAY AND TERRIE MARTINES, Sacramento City Police Officers Derek Stigerts and Averell Brown; and Does I Through Does XIX, Individually and Severally, Defendants/ Appellees., 1994 WL 16059432, \*16059432 (Appellate Brief) (9th Cir. Oct 18, 1994) **Appellants Reply To United States Defendants** (NO. 95-15873) " ★ ★
- [92](#) Dixie Lee POWELL, Defendant and Appellant, v. THE UNITED STATES OF AMERICA, Plaintiff and Appellee., 1994 WL 16133744, \*16133744+ (Appellate Brief) (9th Cir. May 09, 1994) **Appellants Opening Brief** (NO. 9310203) ★ ★
- [93](#) UNITED STATES OF AMERICA, and David Schulz, Revenue Officer, Internal Revenue Service, Petitioners-Appellees, v. Robert W. DOUGLAS, Respondent-Appellant., 1994 WL 16138337, \*16138337+ (Appellate Brief) (9th Cir. Mar 17, 1994) **Optional Reply Brief for the Appellant** (NO. 93-16716) ★ ★
- [94](#) Kenneth L. ALLEN ET AL, v. UNITED STATES OF AMERICA ET AL., 1993 WL 13098036, \*13098036+ (Appellate Brief) (9th Cir. Oct 15, 1993) **Title of Document: Brief for Appellant** (NO. 93-15906) ★ ★
- [95](#) Robert TAYLOR, Plaintiff-Appellant, v. James GAITHER, Defendant-Appellee., 2001 WL 34112247, \*34112247 (Appellate Brief) (11th Cir. Apr 20, 2001) **Appellant's Brief** (NO. 01-11683-II) ★ ★
- [96](#) UNITED STATES OF AMERICA, The Internal Revenue Service, Petitioner/Appellee, v. Nathan GREENSTEIN, Respondent/Appellant., 1997 WL 33624313, \*33624313+ (Appellate Brief) (11th Cir. Dec 16, 1997) **Initial Brief of Appellant Nathan Greenstein** (NO. 97-5234) ★ ★
- [97](#) UNITED STATES OF AMERICA, Plaintiff-Appellee, v. Robert C. MACELVAIN, Defendant-Appellant., 1997 WL 33625128, \*33625128+ (Appellate Brief) (11th Cir. Sep 02, 1997) **Initial Brief**

**of Appellant** (NO. 97-6513) ★ ★ ★

[98](#) TONY JIBILIAN, Plaintiff and Appellant, v. THE UNITED STATES, Defendant and Appellee., 2005 WL 3738084, \*3738084+ (Appellate Brief) (Fed.Cir. Dec 12, 2005) **Appellant's Reply Brief, As Corrected** (NO. 05-5157) ★ ★

[99](#) Gerald Aian BROWN, Plaintiff-Appellant, Charles V. DARNELL, Plaintiff-Appellant, v. THE UNITED STATES, Defendant-Appellee., 1996 WL 33414451, \*33414451+ (Appellate Brief) (Fed.Cir. Aug 15, 1996) **Addendum for Plaintiffs-Appellants Gerald Alan ...** (NO. 96-5107) " ★ ★ ★

[100](#) Gerald Alan BROWN, Plaintiff-Appellant, Charles V. DARNELL, Plaintiff-Appellant, v. THE UNITED STATES, Defendant-Appellee., 1996 WL 33414452, \*33414452+ (Appellate Brief) (Fed.Cir. Aug 15, 1996) **Joint Brief and Appendix for Plaintiffs-Appellants** (NO. 96-5107) ★ ★

[101](#) Ronald E. PARKINSON, Relator-Appellant, v. Honorable Judge STRATTON, Respondent-Appellee. Paul E. Fenner, Plaintiff-Appellee, v. Ronald E. Parkinson, Defendant-Appellant., 1993 WL 13143221, \*13143221+ (Appellate Brief) (Ohio Jan 01, 1993) **Brief for Appellant** (NO. 92-2365) ★ ★

### **Trial Court Documents (U.S.A.)**

#### **Trial Pleadings**

[102](#) Charles Victor HOOPER; Plaintiff; v. Herbert SANDLER; Merion O. Sandler; World Savings and Loan, an entity; Golden West Savings Assoc., Service Co. Inc., an entity, Defendants., 2005 WL 2657192, \*2657192 (Trial Pleading) (E.D.Cal. Aug 26, 2005) **Lodgment of Plaintiff's Amended Complaint for ...** (NO. 205-CV-00244MCE-PAN) ★ ★

[103](#) Charles Victor HOOPER, a married man; Plaintiff, v. Herbert SANDLER, a U.S. Vessel; Merion O. Sandler, a U.S. Vessel; World Savings and Loan, an entity; Golden West Savings Asso., Service Co. Inc., an entity; Defendants., 2005 WL 1025502, \*1025502 (Trial Pleading) (E.D.Cal. Feb 07, 2005) **Lodgment of Plaintiff's Complaint for Quiet-Title ...** (NO. 205CV-00244MCQPANPS) ★ ★

[104](#) Anne Marie CONNOR, Plaintiff, v. UNITED STATES OF AMERICA COMMISSIONER OF INTERNAL REVENUE, Internal Revenue Service, Defendants., 2005 WL 2385683, \*2385683+ (Trial Pleading) (D.Del. Jul 15, 2005) **Request for speedy declaratory judgment 28 U.S.C. ...** (NO. 05-370) ★ ★

[105](#) Karen K. DANIELS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant., 2003 WL 23824001, \*23824001+ (Trial Pleading) (N.D.Ga. Aug 15, 2003) **Memorandum in Support of Plaintiff's Declaratory ...** (NO. 103-CV-2458WBH) ★ ★

[106](#) Clifford LOUIS., Noll and Susan., Noll, husband and wife, Plaintiff, v. UNITED STATES, Defendant., 1999 WL 33989145, \*33989145+ (Trial Pleading) (D.Idaho Dec 14, 1999) **Complaint** (NO. 99CV00590) ★ ★

[107](#) Gregory J. CROWE, Sui Juris, Juris et de Jure, in Propria Persona, Petitioner, v. UNITED STATES OF AMERICA; Internal Revenue Service (IRS); Robert J. Willbrant, individually and as IRS Rev-

eneue Agent; and Charles E. Stewart, individually and as IRS Group Manager, Respondents., 1995 WL 17225834, \*17225834 (Trial Pleading) (D.Mass. Aug 03, 1995) **Petition to Quash Service of Third Party ...** (NO. 95-30170-MAP) ★★

- [108](#) In Propria Persona, All Rights Reserved, Without Prejudice Edwin V. NASSAR, Plaintiff[sic], v. Paul MACKAY (De Facto), Defendant[sic]., Individually., 2004 WL 3333839, \*3333839+ (Trial Pleading) (E.D.Mich. Jun 16, 2004) **Answer To United States Motion To Vacate Clerk's ...** (NO. 03-60165) ★★
- [109](#) In the district court of the United States for the United States of America (Article III jurisdiction, pursuant to the constitution for the United States of America, effective 1789.) for the Western District of Michigan (in recognition of Plaintiff Curtis Verlon Murphy's Federal juristic article person citizenship by legislation of Article 1, of the 14th Amendment, Curtis Verlon MURPHY, United States Slaves' Descendant of African Origin Plaintiff, v. UNITED STATES OF, 2002 WL 32644326, \*32644326 (Trial Pleading) (W.D.Mich. Apr 23, 2002) **Notice of Motion and Motion of Plaintiff for ...** (NO. 102CV0276) ★★
- [110](#) Joseph R. BANISTER, Plaintiff, v. UNITED STATES OF AMERICA, Defendant., 2006 WL 812966, \*812966+ (Trial Pleading) (D.Nev. Feb 03, 2006) **Petition for Expedited Declaratory Judgment 28 ...** (NO. 3-06-CV-00061) ★★
- [111](#) Tod Maurice TODD; Plaintiff; v. James W. GAUTIER; Central Pacific Railroad Company; Defendants., 2005 WL 3767433, \*3767433 (Trial Pleading) (D.Nev. Sep 06, 2005) **Lodgment of Complaint for Quieting Title** (NO. CV-N-05-0495-ECR-VPC) ★★
- [112](#) Richard Leland NEAL; Plaintiff, v. George G. SARGENT; Axel Ericson; Raymond S. Adams; William H. Grisselle; Defendants., 2005 WL 3767358, \*3767358 (Trial Pleading) (D.Nev. 2005) **Lodgment of Complaint for Quieting Title** (NO. CV-S-05-0954-KJD-RJJ) ★★
- [113](#) Mark A. LOBELLO and Barbara A. LoBello, Plaintiffs, v. UNITED STATES OF AMERICA, Internal Revenue Service, Defendants., 2004 WL 3702608, \*3702608+ (Trial Pleading) (D.Nev. May 05, 2004) **Request for speedy Declaratory Judgment 28 U.S.C. ...** (NO. CV-S-04-0573-LDG-RJJ) ★★
- [114](#) UNITED STATES OF AMERICA, Plaintiff, v. Irwin SCHIFF, Cynthia Neun, Lawrence N. Cohen aka Larry Cohen, Individually and doing business as Freedom Books, et al., Defendants., 2003 WL 24268752, \*24268752 (Trial Pleading) (D.Nev. Apr 11, 2003) **Addendum to Answer Defendant Cynthia Neun Answer ...** (NO. CV-S-03-0281-LDG, RJJ) ★★
- [115](#) Mark A. LOBELLO and Barbara A. LoBello, Plaintiffs, v. UNITED STATES OF AMERICA, Commissioner of Internal Revenue, Internal Revenue Service, Defendants., 2002 WL 32975647, \*32975647+ (Trial Pleading) (D.Nev. Sep 27, 2002) **Request for speedy Declaratory Judgment 28 U.S.C. ...** (NO. CV-S-02-1264-LRH-LRL) ★★

### **Trial Motions, Memoranda and Affidavits**

- [116](#) John E., SEARCY III, Sui Juris, Plaintiff, v. James E. DONELSON, I.R.S., Bill Wilde, I.R.S., Lee R. Monks, I.R.S., Joyce Shead, I.R.S., Nancy Bellcock, I.R.S., K. J. Sawyer, I.R.S., James E. Gamble, I.R.S., Maurice Bonds Whillock, Van Buren County Clerk & Recorder, Lisa Nunley, Van Buren County Collector, The County of Van Buren, Arkansas, and All Unknown Others, Defendants., 1998 WL 34349298, \*34349298 (Trial Motion, Memorandum and Affidavit) (E.D.Ark. Dec

- 04, 1998) ""**Brief in Support of Motion for Summary ...** (NO. B-C-98-68) ★★
- [117](#) UNITED STATES OF AMERICA, Petitioner, v. Michael N.BENOIT, Respondent., 2006 WL 1866792, \*1866792 (Trial Motion, Memorandum and Affidavit) (S.D.Cal. May 01, 2006) **Memorandum of Points and Authorities in Support ...** (NO. 06CV0657IEGNLS) ★★
- [118](#) Christopher M. Roe Kelly A. ROE, Unrepresented Complainants, v. UNITED STATES, Respondent., 2005 WL 2836194, \*2836194 (Trial Motion, Memorandum and Affidavit) (D.Colo. Sep 28, 2005) **Memorandum in Support of Motion for ...** (NO. 04-MK-0425, MJW) ★★
- [119](#) Robert Charles ABELL, and Lisa Jean Abell, Sui Juris, natural persons, Plaintiffs, v. William R. SOTHEN AND COWORKERS, et al. as individuals; Internal Revenue Service (writ of mandamus) Defendants., 2005 WL 2836490, \*2836490 (Trial Motion, Memorandum and Affidavit) (D.Colo. Aug 19, 2005) **Motion to Dismiss Summary Denial and Enforcement ...** (NO. 105-CV-00706-REB-BNB) ★★
- [120](#) Hawk WINDWALKER, Plaintiff, v. OPERATIONS MANAGER, Collections Irs Kansas City, Mo., Defendant., 2005 WL 2916481, \*2916481 (Trial Motion, Memorandum and Affidavit) (M.D.Fla. Sep 12, 2005) **Brief and Memorandum of law** (NO. 805-CV-01710-RAL-TGW) ★★
- [121](#) In re: Michael FLEMING, Injured Party/Plaintiff, v. SEVEN RECORDS OF LIEN, Defendant., 2002 WL 32667125, \*32667125 (Trial Motion, Memorandum and Affidavit) (M.D.Fla. Jul 12, 2002) **Petition Amending Memorandum in Support of Lawful ...** (NO. 802-CV-781-T-17TGW) ★★
- [122](#) John KORMAN, Plaintiff, v. UNITED STATES OF AMERICA and Internal Revenue Service and Sharon R. Bock, Clerk and Comptroller of Palm Beach County., 2006 WL 3851112, \*3851112 (Trial Motion, Memorandum and Affidavit) (S.D.Fla. Nov 21, 2006) **Plaintiff's Opposition to Internal Revenue Service ...** (NO. 06-80848) ★★
- [123](#) Wilma Neal LOWE, and the United States of America, party in privity, Plaintiff, v. FIRST UNION NATIONAL BANK; Dutton & Dutton, P.C.; Intercounty Judicial Sales Corporation; William E. Dutton, Jr.; Barbara J. Dutton; State of Illinois; County of Cook; and City of Chicago; Defendants., 2002 WL 32684138, \*32684138 (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Dec 23, 2002) **Nonstatutory Abatement, Affidavit of Specific ...** (NO. 02C-6591) ★★
- [124](#) Tod L. ALEXANDER, Plaintiff, v. Mark W. EVERSON, Commissioner of the Internal Revenue Service, and Joni Broadbent, John Nguyen, B Strudel, Jeffry D. Epplery, Defendants., 2005 WL 2096281, \*2096281 (Trial Motion, Memorandum and Affidavit) (D.Kan. Jul 20, 2005) **Brief in Support of Motion to Deny the United ...** (NO. 05-1129-JTM) ★★
- [125](#) UNITED STATES OF AMERICA, v. Eddie FERRAND William Kennedy Glenda Elliot., 2006 WL 810781, \*810781+ (Trial Motion, Memorandum and Affidavit) (W.D.La. Feb 23, 2006) **Answer and Writ for Clarification** (NO. 05-0069) ★★
- [126](#) UNITED STATES OF AMERICA, Plaintiff, Eddie FERRAND, Individually and d/b/a MR. Ed's Tax Service Glenda Faye Elliott, Michael Dwayne Dell, William Nathaniel Kennedy Jhacoby Lakelsey Toston, Defendants., 2005 WL 3797228, \*3797228 (Trial Motion, Memorandum and Affidavit) (W.D.La. Dec 29, 2005) **Memorandum in Support of Opposition of William ...** (NO. CV05-0069) ★★
- [127](#) UNITED STATES OF AMERICA, Plaintiff, Eddie FERRAND, Individually, and d/b/a MR. Ed's Tax Service Glenda Faye Elliott, Michael Dwayne Dell, William Nathaniel Kennedy Jhacoby

- Lakelsey Toston, Defendants., 2005 WL 3797229, \*3797229 (Trial Motion, Memorandum and Affidavit) (W.D.La. Dec 29, 2005) **Opposition of William Nathaniel Kennedy to the ...** (NO. CV05-0069) ★★
- [128](#) UNITED STATES OF AMERICA, Petitioner, v. Teresa HOPPER, Respondent., 2005 WL 3146760, \*3146760 (Trial Motion, Memorandum and Affidavit) (E.D.N.Y. Oct 13, 2005) **Memorandum of Law in Support of Cross-Motion and ...** (NO. 05-MISC-0172, ADS) ★★
- [129](#) Jerry P McNEIL, a man, ouster le mer Unrepresented Demandant and Claimant/Petitioner, v. 1. AGENTS AND SURROGATES FOR INTERNATIONAL MONETARY FUND, The Internal Revenue Service, District Director, Special Procedures Function Officer and Their Principal, Governor of International Monetary Fund Aka Secretary of the Treasury, John Snow; Respondents/Libelants., 2006 WL 460787, \*460787+ (Trial Motion, Memorandum and Affidavit) (N.D.Okla. Jan 04, 2006) **Petition for Default on Failure to Answer** (NO. ADMIRALTY05CV-579CVE) ★★
- [130](#) David McILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 1852391, \*1852391+ (Trial Motion, Memorandum and Affidavit) (D.Or. May 17, 2006) **Response to Timothy J. Resch's Declaration and ...** (NO. 305-CV-1151-ST) ★★
- [131](#) David McILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 1852389, \*1852389+ (Trial Motion, Memorandum and Affidavit) (D.Or. May 16, 2006) **Response to Sellers Argument** (NO. 305-CV-1151-ST) ★★
- [132](#) David Mcilwain, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 1833260, \*1833260+ (Trial Motion, Memorandum and Affidavit) (D.Or. May 04, 2006) **Objections and Corrections to Magistrate ...** (NO. 305-CV-1151-ST) ★★
- [133](#) David MCILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 990224, \*990224 (Trial Motion, Memorandum and Affidavit) (D.Or. Feb 15, 2006) **Objection to DOC #98 and Plaintiff Requests ...** (NO. 305-CV-1151-ST) ★★
- [134](#) David MCILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 393689, \*393689 (Trial Motion, Memorandum and Affidavit) (D.Or. Jan 21, 2006) **Objection to Defendant Sellers' Response to ...** (NO. 305-CV-1151-ST) ★★
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- and Wyatt, P.C., Defendants., 2006 WL 393688, \*393688+ (Trial Motion, Memorandum and Affidavit) (D.Or. Jan 17, 2006) **Plaintiff's Findings, Objections and ...** (NO. 305-CV-1151-ST) ★★
- [136](#) David MCILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Uaknown"" I.R.S. Employeces Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2006 WL 393686, \*393686+ (Trial Motion, Memorandum and Affidavit) (D.Or. Jan 07, 2006) **Motion to Compel Discovery on All Defendants** (NO. 305-CV-1151-ST) ★★
- [137](#) David MCILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2005 WL 3285687, \*3285687+ (Trial Motion, Memorandum and Affidavit) (D.Or. Oct 26, 2005) **Objections to Findings and Recommendations of ...** (NO. 305-CV-1151-ST) ★★
- [138](#) David MCILWAIN, Plaintiff, v. COMMISSIONER OF INTERNAL REVENUE, Mark W. Everson ""Unknown"" I.R.S. Employees Oregon Department of Revenue, Director Elizabeth Harchenko Angie Long and CEO of Reliable Service People, Inc. Marc K. Sellers of Schwabe, Williamson and Wyatt, P.C., Defendants., 2005 WL 3285682, \*3285682 (Trial Motion, Memorandum and Affidavit) (D.Or. Oct 06, 2005) **Response to Counselors Doug Stringer's and ...** (NO. 305-CV-1151-ST) ★★
- [139](#) UNITED STATES OF AMERICA, Plaintiff, v. Johnny D. RUPE, Sherry J. Rupe, and Treasure Chest Trust, Defendants., 2006 WL 1433529, \*1433529 (Trial Motion, Memorandum and Affidavit) (N.D.Tex. Apr 10, 2006) **Defendant's Motion to Dismiss** (NO. 406-CV-116-Y) ★★
- [140](#) THE MOORISH NATIONAL REPUBLIC STATE, et al., Plaintiffs, v. State of Washington, et al., Defendants., 2003 WL 24860793, \*24860793 (Trial Motion, Memorandum and Affidavit) (W.D.Wash. Oct 31, 2003) **Plaintiff's Response to Defendant's Motion to ...** (NO. C03-2901L) ★★
- [141](#) In the Matter of: Harold A. LANGE, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent., 2005 WL 2137877, \*2137877 (Trial Motion, Memorandum and Affidavit) (U.S.Tax Ct. Apr 29, 2005) **Brief for Petitioner** (NO. 8704-04) ★★





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**KEYCITE**

**C**[Long v. Rasmussen](#), 281 F. 236, 4 A.F.T.R. 3561 (D.Mont., May 29, 1922) (NO. 97)

Westlaw has no direct history for this case

Trial Court

KeyCited Case  
 [Long v. Rasmussen](#)  
281 F. 236  
D.Mont. May 29, 1922

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Trial Court

Trial Court

**LONG v. RASMUSSEN, Collector of Internal Revenue, et al.**

(District Court, D. Montana, May 29, 1922.)

No. 97.

1. Internal revenue. ⚡28—Prima facie proof property was owned by claimant puts burden on collector to prove it belonged to taxpayer.

In a suit to enjoin the collector of internal revenue from selling property claimed by plaintiff under distraint to enforce taxes levied against another, evidence on behalf of plaintiff that the property comprised the furnishings of a hotel conducted by her, which was in her possession when distrained, was proof of her ownership and right of possession, which imposed on the defendant the burden to justify the seizure by a preponderance of evidence showing that the property belonged to the taxpayer.

2. Internal revenue. ⚡28—Evidence held to show property distrained did not belong to taxpayer.

In a suit to restrain the sale of property claimed by plaintiff for taxes and penalties assessed against another, where plaintiff had made a prima facie case of ownership and right to possession, evidence on behalf of the collector held insufficient to show that the property distrained was that of the taxpayer.

3. Evidence. ⚡99—Lists of property returned for taxes are generally inadmissible against other parties.

On the issue of ownership of personal property between a claimant of the property and the collector of internal revenue, who had distrained it as the property of a taxpayer, tax lists returned by the taxpayer to the assessor of local taxes, including the property in controversy, are generally incompetent as res inter alios acta.

4. Internal revenue. ⚡28—Threatened seizure of property, which would interrupt going business, may be enjoined.

An injunction may be issued to restrain the collector of internal revenue from seizing the property of plaintiff for the taxes owing by another, where such seizures threaten disruption of plaintiff's going business, resulting in the infliction of uncertain damages and irreparable injury.

5. United States. ⚡125—Suit to enjoin distraint by collector is not suit against United States.

A suit against the collector of internal revenue to enjoin sale by him under distraint proceedings of property claimed by plaintiff for taxes assessed against another is not a suit against the United States, but is against an individual who, as an officer in discharge of a discretionless ministerial duty, is committing trespass on plaintiff's property without authority.

6. Internal revenue. ⚡28—Statute against restraining collection of taxes applies only to suits by taxpayer.

Rev. St. § 3224 (Comp. St. § 5947), prohibiting suit to restrain the collection of any tax, applies to suits by taxpayers only, who are given a remedy by section 3226 (Comp. St. § 5949), and does not prohibit an injunction against sale under distraint of the property belonging to plaintiff to satisfy taxes assessed against another.

7. Internal revenue. ⚡28—Statute against restraining collection of taxes applies only to those within scope of revenue laws.

Rev. St. § 3224 (Comp. St. § 5947), prohibiting suits to enjoin the collection of taxes, applies only to persons and things within the scope of the revenue laws, and not to those without such scope.

8. Internal revenue. ⚡28—Prevention of replevin of property distrained does not prevent injunction against sale.

Rev. St. § 934 (Comp. St. § 1560), making irrepleviable property taken by an officer under authority of any revenue law, and making such prop-

⚡For other cases see same topic & KEY-NUMBER in all Key-Numbered Digests & Indexes

erty in custody of law subject only to decrees of the courts of the United States, probably prevents replevin of property seized by the collector of internal revenue to satisfy taxes levied against one not the owner; but the owner of the property is left free to bring any other proper action to determine the ownership and possession of the property.

In Equity. Suit by Edna Long against C. A. Rasmussen, Collector of Internal Revenue for the District of Montana, and another. Decree rendered for plaintiff.

George F. Shelton, J. Bruce Kremer, L. P. Sanders, and Alf C. Kremer, all of Butte, Mont., for plaintiff.

John L. Slattery, U. S. Dist. Atty., of Helena, Mont., for defendants.

BOURQUIN, District Judge. Plaintiff alleges she owns and is entitled to possession of certain property distrained by defendant collector of internal revenue, to make certain "distilled spirits taxes and penalties" assessed against one Wise, and she seeks to enjoin threatened sale and to recover possession.

[1] The evidence in her behalf is that the property is the furnishings of a resort or hotel conducted by her, excepting an automatic organ is owned by her, and was in her possession when distrained by defendant. This is proof of plaintiff's ownership and right of possession, and imposes upon defendant the burden to justify the seizure by a preponderance of the evidence that Wise owns the property.

[2] To that end he presents ambiguous circumstances only, viz. that Wise or his wife has some interest in the hotel building; that during plaintiff's tenancy of the building Wise once gave his address as at that hotel, had installed the automatic organ, and made payments upon it, and in 1917-1921 presented to the assessor of local taxes lists of property for taxation to Wise, including the hotel building and furnishings, which taxes were paid by him. These lists were admitted, subject to the anomalous objection that they be "taken only for what they are worth."

[3, 4] Being res inter alios acta, the better rule is that generally they are not competent evidence in actions involving title and ownership of property, and to which the list maker is not a party. In any event, the burden has not been sustained by defendant, and the finding is that at time of seizure and now plaintiff was and is owner and entitled to possession of the property. To dispose briefly of various suggestions, rather than contentions, the seizure threatening disruption of plaintiff's going business, infliction of uncertain damages, and irreparable injury, equity has jurisdiction, even as in like circumstances of wrongful attachment or execution, for that law affords no adequate remedy. See *Watson v. Sutherland*, 5 Wall. 79, 18 L. Ed. 580.

[5] The suit is not against the United States, but is against an individual who, as an officer of the United States in discharge of a discretionless ministerial duty, upon plaintiff's property is committing without authority, contrary to his duty, and in violation of the due process of the Constitution and the revenue laws of the United States, positive acts of trespass for which he is personally liable. See *Philadelphia Co. v. Stimson*, 223 U. S. 620, 32 Sup. Ct. 340, 56 L. Ed. 570;

*Belknap v. Schild*, 161 U. S. 18, 16 Sup. Ct. 443, 40 L. Ed. 599; *U. S. v. Lee*, 106 U. S. 219, 1 Sup. Ct. 240, 27 L. Ed. 171; *Magruder v. Association*, 219 Fed. 78, 135 C. C. A. 524. Congress has no power to grant, and has not assumed to grant, authority to the defendant collector to distrain the property of one person to make the taxes of another. Perhaps it could, were the property in possession of the taxpayer, which is not this case. See *Sears v. Cottrell*, 5 Mich. 253.

[6] Section 3224, R. S. (Comp. St. § 5947), that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," applies to taxpayers only, and who, thus deprived of one remedy, are given another by section 3226, R. S. (Comp. St. § 5949), viz. an action to recover after taxes paid and repayment denied by the Commissioner. Nor are they limited to this statutory remedy, but, after taxes paid, they may have trespass or other action against the collector. See *Erskine v. Hohnbach*, 14 Wall. 616, 20 L. Ed. 745; *De Lima v. Bidwell*, 182 U. S. 179, 21 Sup. Ct. 743, 45 L. Ed. 1041; *Pacific Co. v. U. S.*, 187 U. S. 453, 23 Sup. Ct. 154, 47 L. Ed. 253.

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. The instant suit is not to restrain assessment or collection of taxes of Wise, but is to enjoin trespass upon property of plaintiff, and against whom no assessment has been made, and of whom no collection is sought. Note, too, the taxes are not assessed against the property. This presents a widely different case than that wherein the person assessed, or whose property is assessed, seeks to restrain assessment or collection on the theory that he or it is exempt from taxation, or that for any reason the tax is illegal.

[7] The distinction between persons and things within the scope of the revenue laws and those without them is vital. See *De Lima v. Bidwell*, 182 U. S. 176, 179, 21 Sup. Ct. 743, 45 L. Ed. 1041. To the former only does section 3224 apply (see cases cited in *Violette v. Walsh* [D. C.] 272 Fed. 1016), and the well-understood exigencies of government and its revenues and their collection do not serve to extend it to the latter. It is a shield for official action, not a sword for private aggression. There is dictum to the contrary in *Sheridan v. Allen*, 153 Fed. 569, 82 C. C. A. 522, but it is neither supported by the case it cites nor by any other brought to attention.

[8] *Markle v. Kirkendall* (D. C.) 267 Fed. 500, tends to the conclusion herein. It is not improbable that section 934, R. S. (Comp. St. § 1560), wherein it provides that property taken by an officer "under authority of any revenue law" is "irrepleviable," is in "custody of law," and "subject only to the orders and decrees of the courts of the United States having jurisdiction thereof," contemplates the instant case. The collector assumed in good faith to distrain property he believes to be the taxpayer's. If he peaceably secures possession of it (for, if not the

taxpayer's; the owner may lawfully forcibly prevent), he is not bound to deliver it to any chance claimant, nor is he subject to be deprived of it by replevin before trial.

The nontaxpayer owner, however, is free to bring any other proper action, the court to determine title, ownership, and possession, the collector having no power to do so, and the property "subject only to the orders and decrees of the court," to be by the court disposed of as justice requires. See *In re Fassett*, 142 U. S. 486, 12 Sup. Ct. 295, 35 L. Ed. 1087; *De Lima v. Bidwell*, 182 U. S. 180, 21 Sup. Ct. 743, 45 L. Ed. 1041. And this is the course in respect to any property in custodia legis, aside from statute.

This trial demonstrating that plaintiff owns and is entitled to possession of the property, and that the defendant wrongfully seized it to make taxes owed by Wise, justice requires that the sale be enjoined and the possession restored to her.

Decree accordingly, and with costs.

UNITED STATES V. SUGARLAND INDUSTRIES.

(District Court, S. D. Texas, at Galveston. May 26, 1922.)

Nos. 1126-1131.

1. Shipping ⇨171—Bills of lading held to incorporate demurrage provisions of charter, so as to charge lien on cargo.

Bills of lading, two of which made the consignee or assigns liable for freight and demurrage as provided in the charter party, and the others of which stated freight and conditions were to be in accordance with the charter party, which took precedence of the bill of lading, were sufficient to embody the provisions of the charter party for demurrage into the bills of lading, so as to charge the cargo in the hands of the consignee with a lien for such demurrage.

2. Shipping ⇨184—Evidence held to show vessel's equipment would permit discharge at charter rate.

Evidence on a libel for demurrage held to show that the vessel's equipment was sufficient, if manned with competent labor, to have discharged the vessel at the rate required by charter, and that the delay was due to the inefficiency of the labor employed.

3. Shipping ⇨177—Vessel's capacity for discharging includes capacity of laborers. It must furnish as well as of equipment.

Since the vessel is under obligations to furnish the labor for discharging the cargo, a provision in the charter party extending the lay days, if the vessel is unable to discharge at the rates provided, is not limited to cases where the vessel's equipment is insufficient to discharge at that rate, but includes cases where the laborers furnished by the vessel are not sufficiently efficient, because of general labor conditions at the port, to make the discharge at the required rate.

In Admiralty. Separate libels by the United States, as owner of the steamship *Lake Fairlie* and five other steamships, against the Sugarland Industries to recover demurrage. Decree rendered for respondent.

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