

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

United States of America)
Plaintiff)
V.)
Jimmy C. Chisum, sui juris)
Defendant)

Case 05 CR 043 WHT

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA
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WILLIAM B. GUTHRIE, CLERK
BY _____ DEPUTY CLERK

Jimmy C. Chisum's Motion to Vacate

Defendant moves this court for vacation of the judgment of the jury. The trial court lacked subject matter jurisdiction.

First jurisdictional failing: the record shows that Jimmy C. Chisum was "arraigned" by Kimberly West, a magistrate. Federal Magistrates are deprived of authority to perform arraignments for felony crimes. See 28 USC 636. Kimberly West further deprived West and White of jurisdiction by failing to address Jurisdictional challenge and refusing to decide and declare Nature and cause in rebellious disregard for Due process rights guaranteed in the US Constitution.

Second jurisdictional failing: the subject matter jurisdiction was never ceded. The record shows that Jimmy C. Chisum repeatedly challenged the court's jurisdiction but the question of jurisdiction was evaded.

Third jurisdictional failing: the subject matter jurisdiction was never established. The indictment never alleged a tax for which the defendant or Chadsey was liable; no competent fact witness appeared in pretrial or trial to establish a legal liability or the essential element of assessment. Absence of all evidence of assessment and testimony from alleged expert show nothing other than "we think" or "estimate" is not best proof.

Fourth jurisdictional failing: the subject matter jurisdiction was never ceded to the court. Denial of due process by Kimberly West and Ronald White to address and declare the Nature and Cause of the allegation and action; no documentary proof or competent fact witness was ever before the court to declare and establish Nature and cause.

Fifth Jurisdictional failing: the subject matter jurisdiction was never ceded to the court. The record shows there was no documentary evidence or competent fact witness of Statutory Authority or delegated authority to impair the obligations of contract and do violence against the Constitution and limited authority of congress for taxation.

Memorandum of law regarding Jurisdictional Challenges:

defective indictment

The Federal practice and procedure section 3522 clearly establishes that once jurisdiction has been challenged it is presumed that the court lacks jurisdiction unless or until the evidentiary sufficiency is provided and submitted to the record. The presumption is that a court lacks jurisdiction on a particular issue until it has been demonstrated that jurisdiction over the subject matter exists. The facts showing the existence of jurisdiction must be affirmatively in the record. If jurisdiction is challenged, the burden is on the party claiming jurisdiction to demonstrate that the court has jurisdiction over the subject matter. **The limits upon jurisdiction must be neither disregarded nor evaded. The requirement to submit admissible evidence upon the record proving jurisdiction once jurisdiction is challenged is mandatory.** The Supreme Court of the United States as well as lower courts have consistently reaffirmed the requirement that once jurisdiction is challenged those who claim jurisdiction must submit evidence to prove the validity of the claim. See *Twining v. New Jersey*, 211 US 78, 29 S. Ct. 14, 24(1908); *Old Wayne Mutual Life v McDonough*, 204 US 8, 27 S. Ct.

236(1907); *Scott v. McNeal*, 154 US 34, 14 S. Ct. 1108 (1894); *Pennoyer v. Neff*, 95 US 714, 733 (1877); *Hagen v. Lavine*, 415 U.S. 528, 533, 39 L.Ed. 577, 94 S.Ct. 1372 (N.Y. March 28, 1974); *United States v. Roger*, 23 f. 658 (W.D. Ark 1885); *State of Maine v. Thiboutot*, 448 U.S. 1, 100 S.Ct. 2502 (1980); *McNutt v. General Motors Acceptance Corporation of Indiana Inc.*, 298 U.S. 178, L.Ed. 1135, 56 S.Ct. 780 (1936); [jurisdiction may never be presumed] *Special Identity Fund v. Pruitt*, 205 F.2d. 3006, 201 Okl. 308; [jurisdiction must be affirmatively shown], *United States v. Chairito*, 69 F.Supp. 317 (D. Or. 1946); [jurisdiction can not be presumed], *Standard v. Olesen*, 98 L. Ed. 1151, 74 S.Ct. 768 (1954); *Garcis v. Dail*, 586 S.W. 2d. 524, at 528 (Tex. C.A. 1980); **(lack of jurisdiction required dismissal)**, *Burks v Laskar*, 441 U.S. 471 (1979), and Title 5 U.S.C. 556 and 558(b).

For the record to verify factual sufficiency to the court's conclusion that jurisdiction was complete, the record would have to show:

1. That Brian and Mitzi Chadsey and or Jimmy C. Chisum was in receipt of a procedurally proper, lawful assessment of a tax bill due and owing the Treasury including the type of tax owed as can only be shown by a summary record of assessment. See 26 C.F.R. 301.6203-1, Fed.R.Evid. 801(d)(2)(D), *United States v. Van Griffin*, 874 F.2d. 863 (9th Cir. 1989); *Meyersdale fuel Co. v. united States*, 44 F.2d. 437, 443 (Ct.Cl. 1930), *Brafman v. United States*, 384 F.2d. 863 (5th Cir. 1967); *Stallard v. United States*, 806 F.Supp. 152, 158 (W.D. Tex. 1992); *Ianelli v. Long*, 329 F.Supp. 1241, 1242 (W.D. Pa. 1971); *Planned Investments, Inc. v. United States*, 881 F.2d. 340, 343 (6th Cir. 1989); and *Robinson v. United States*, 920 F.2d. 1157, 1158 (3rd Cir. 1990).

2. The type of tax owed would have to be one of those in the Statute laid by Congress in Congress limited Constitutional authority and codified at: 26 USC ss 4001, 4003, 4041, 4042, 4051, 4064, 4071, 4081, 4091, 4121, 4131, 4161, 4181, 4251,

4943, 4944, 4945, 4948, 4951, 4952, 4953, 4955, 4958, 4971, 4972, 4974, 49975, 4976, 4977, 4978, 4979, 4979A, 4980, 4980B, 4980C, 4980D, 4980E, 4981, 4982, 4999, 5000, 5001, 5041, 5051, 5701, and 5881; along with verified proof by the testimony of a competent fact witness to the application of the law to Chadsey and Jimmy C. Chisum.

3. That the summary record of assessment naming Brian and Mitzi Chadsey was entered into the summary record of assessments. Without enrolling the assessment, the Treasury is not authorized to convert presumed taxpayers' escrow accounts to the use of the Treasury. See *Baral v. United States*, 528 U.S. 431, 120 S.Ct. 1006, 145 L.Ed.2d. 949 (U.S. 02/22/2000) and *Henry P. Begier, Jr. Etc. Petitioner v. Internal Revenue Service*, 496 U.S. 53. 110 S.Ct. 2258, 110 L.Ed.2d. 46, U.S.L.W. 4674.

4. That Brian Chadsey and Mitzi Chadsey were in receipt of a statutory notice of deficiency. See Internal Revenue Manual at Part 25.3.1.3.

Additionally even if the plaintiff was able to come forward with these proofs (from the record) the indictment and other ~~papers~~ papers filed with the ~~four~~ court by the plaintiff would **still be factually insufficient to empower** this court with jurisdiction, to wit: the government would still be required to cite the statute which made Jimmy C. Chisum subject to and liable for the tax alleged due and owing by Brian and Mitzi Chadsey; and the statute making Braan and Mitzi Chadsey liable for a tax. See IRM Part 9.1.2.1. – the government ~~weld~~ would still be required to show the required Treasury Delegation Orders required at 26 U.S.C. 7801. as well as verifying the necessary delegated authority identified at IRM – 9.1.2.2, 9.1.2.3.1, 9.1.2.3.2, 9.1.2.7.2, 9.1.2.8, 9.3.1.3.3.1, 9.4.1.2, 9.4.1.5.6, 9.4.1.6.2, 9.9.1.3. and the government was required to make, reasonable under tie circumstances, to determine if (irrespective of all

Chisum had a good faith belief that what Jimmy C, Chisum did was correct – See IRM 25.1.1.4.

Absent these proofs, entered into the record via a competent fact witness testifying to authenticated evidence, the conviction dated November 30, 2005 is facially void as the court was deprived of judicial power to try Jimmy C. Chisum for the felony crime of Tax Evasion. Regardless of all else; since no valid assessment occurred or was submitted as evidence before the Grand Jury and the court no valid proceedings ensued.


Prepared and submitted this 9th day of March, 2006 AD



Jimmy C. Chisum, sui juris

Certificate of Service

I, Jimmy C. Chisum, hereby certify that a copy of the foregoing Judicial Notice has been delivered to Jeffrey Gallant, AUSA this 9th day of March, 2006.



Jimmy C. Chisum, Sui Juris, Pro Per