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1 **JACKSON WHITE**
2 **ATTORNEYS AT LAW**
3 *A Professional Corporation*

4 40 North Center, Suite 200
5 Mesa, Arizona 85201
6 (480) 464-1111
7 Attorneys for Defendant
8 By: Jeremy S. Geigle, No. 021786

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 THE STATE OF ARIZONA,
12 Plaintiff,
13 vs.
14 JOHN CHESTER STUART,
15 Defendant.

No. CR2008-006332-001

MOTION TO DISMISS

(Assigned to the Honorable
Paul McMurdie)

16 Defendant, through counsel undersigned, moves this court to dismiss this case because there
17 are no laws (state or federal) nor established procedure to properly file federal tax documents with
18 this Court. This motion is more fully set forth in the accompanying Memorandum of Points and
19 Authorities.

20 DATED this 5th day of September, 2008.

JACKSON WHITE

21
22 By *JSG*
23 Jeremy S. Geigle
24 Attorneys for Defendant
25 ...
26 ...

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. FACTS**

3 The facts remain in dispute. However, for the purpose of this motion to dismiss, we assume
4 all of the factual allegations of the State are true. The State has alleged that on or about March 26,
5 2008, John Stuart filed a pro-per petition and memorandum in Maricopa County Superior Court and
6 included false or forged IRS form 1040 V and IRS form 1099-OID with the group of documents.

7 **LAW**

8 A person who acknowledges, certifies, notarizes, procures or offers to be filed,
9 registered or recorded in a public office in this state an instrument he knows to be
10 false or forged, which, if genuine, could be filed, registered or recorded under any law
11 of this state or the United States, or in compliance with established procedure is guilty
12 of a class 6 felony. As used in this section "instrument" includes a written instrument
13 as defined in § 13-2001.¹

14 A.R.S. § 39-161 was copied verbatim from California Penal Code § 115(a).²

15 The purpose of A.R.S. § 39-161 is to protect the integrity and reliability of public records.³

16 The whole object of all laws which require or permit instruments to be filed, registered, or
17 recorded in any public office is that the general public, if interested in the subject-matter of the
18 instrument, may proceed to the proper office, and if therein they find an instrument duly filed,
19 registered, or recorded, they may and must act with the presumption that such an instrument is
20 indeed in existence and is genuine, and govern their affairs accordingly.⁴

21 **2. ARGUMENT**

22 There are no laws nor established procedure to file federal tax documents with this Court.

23 ¹A.R.S. § 39-161.

24 ²*Lewis v. State*, 32 Ariz. 182,186, 256 P. 1048, 1049 (Ariz. Jun 13, 1927) (NO. 639).

25 ³*People v. Gangemi*, 13 Cal.App.4th 1790, 17 Cal.Rptr.2d 462 (Cal.App. 1 Dist. Mar
26 10, 1993) (NO. A054746).

⁴*Lewis v. State*, 32 Ariz. 182, 188, 256 P. 1048, 1050 (Ariz. Jun 13, 1927) (NO. 639).

1 A.R.S. § 39-161 makes knowingly filing a false document a crime so long as that document,
2 if genuine, could be properly filed under any law (state or federal) or in compliance with established
3 procedure.

4 There are no laws (state or federal) nor established procedure to properly file federal tax
5 documents with this Court. See Affidavit of William H. Barchilon, C.P.A, attached hereto as
6 Exhibit "A".


7 Here, the State has alleged that Mr. Stuart knowingly filed false federal tax documents with
8 this court. Here, the federal tax documents, if genuine, could *not* be properly filed with this court
9 under any law (state or federal) nor in compliance with established procedure. Therefore, the
10 conduct alleged by the State is not actionable under A.R.S. § 39-161.

11 **3. CONCLUSION**

12 This case should be dismissed because even taking all of the State's allegations as true,
13 defendant did not violate A.R.S. § 39-161. There are no laws (state or federal) nor established
14 procedure to properly file federal tax documents with this court. For the foregoing reasons, it is
15 respectfully requested that this case be dismissed.

16 RESPECTFULLY SUBMITTED this 5th day of September, 2008.

17 JACKSON WHITE

18 By 
19 Jeremy S. Geigle
20 40 N. Center Street, Suite 200
21 Mesa, Arizona 85201
Attorneys for Defendant

22 ORIGINAL filed with Clerk of
23 Court and COPY hand delivered
this 5th day of September, 2008, to:

24 Hon. Paul McMurdie
25 Maricopa County Superior Court
101 W. Jefferson Ave., Ste. 413
Phoenix, Arizona 85003
26 Assigned Judge

1 and COPY faxed and mailed same date to:

2 Susie Charbel, Deputy County Attorney
3 Maricopa County Attorney's Office
4 301 W. Jefferson, Suite 400
5 Phoenix, Arizona 85003-2191
6 Attorney for Plaintiff
7 [fax #602-506-7950]

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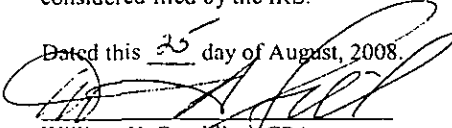
Affidavit of William H. Barchilon, CPA

State of Arizona)
)
Maricopa County)

William H. Barchilon having been duly sworn, under penalty of perjury, states as follows:

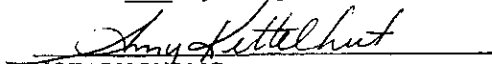
1. I am of sound mind and competent to testify as to the matters stated herein.
2. I am a Certified Public Accountant and have 20 years experience in the same.
3. I have knowledge related to the preparation and filing of tax forms including IRS form 1040V and IRS form 1099-OID.
4. I have knowledge in the established procedure of filing federal tax forms including IRS form 1040V and IRS form 1099-OID.
5. IRS Form 1040V instructions require that IRS 1040V be filed with the Department of the Treasury, Internal Revenue Service Center.
6. IRS Publication 1220 requires that IRS form 1099-OID be filed with the Department of the Treasury, Internal Revenue Service Center.
7. The long standing established procedure for filing IRS forms 1040V and 1099-OID is to file the same with the Department of the Treasury, Internal Revenue Service Center.
8. If IRS forms 1040V and 1099-OID are sent to any public office other than the Department of Treasury, Internal Revenue Service Center, the forms will not be considered filed by the IRS.

Dated this 25 day of August, 2008.



William H. Barchilon, CPA

SUBSCRIBED TO AND SWORN TO before me this 25 day of August, 2008, by William H. Barchilon.



NOTARY PUBLIC

My Commission Expires:
1/14/2010

