

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARILYN PATRIOT)	
PLAINTIFF,)	
)	
v.)	CIVIL CASE NO: 1:07-cv
)	
UNITED STATES, et al.)	
DEFENDANT)	

PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS AND TRANSFER VENUE

Plaintiff Marilyn Patriot files this opposition to Defendant’s motion filed December 7, 2007 to dismiss and transfer venue. Defendant’s motion to dismiss should not be granted. The U.S. District Court for the District of Columbia has jurisdiction to adjudicate this case.

QUESTIONS PRESENTED

8. What Damages are the Plaintiff entitled to under 26 U.S.C. §7433?
9. Can Plaintiff, a resident of Buffalo (Johnson County) in the state of Wyoming, file this case in the U.S. District Court for the District of Columbia?

ARGUMENT

I. THIS COURT SHOULD GRANT PLAINTIFF’S CLAIM FOR DAMAGES

1. According to 26 U.S.C. §7433, “defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000, in the case of negligence) or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2) the costs of the action”
2. For Plaintiff to seek an amount equal to \$100,000 in damages, that would not be contrary to 26 U.S.C. §7433 which permits a maximum of \$100,000 in the case of negligence. Plaintiff may seek that amount, and the Court has the prerogative to grant the maximum damages or a lesser amount. In this case, the Court has yet to decide what the damages equal to. Even if the amount of damages has been misstated in Plaintiff’s original complaint, doing so would not negate Plaintiff’s right to other damages listed in the complaint, authorized by law, and rightfully deserved by Plaintiff.

On September 25, 2001 the IRS levied Plaintiff's Michigan State Teacher's Pension in the amount of \$945.54 per month. This continued until June 2006. Plaintiff allegedly had a tax debt of approximately \$10,000. However, a total of \$53,895.78 was illegally removed from her pension. In addition, \$3,449.10 was levied from Plaintiff's social security (Exhibit H).

10. The facts are undisputed: She filed tax returns (late) showing she owed about \$10,000. The tax service did not challenge her self assessment and in fact accepted them.
11. The levy on her pension recouped all the tax debt quickly. But the tax service, as usual, kept the levy on her pension. Eventually the tax collectors took from her \$30,000 according to their figures or \$60,000 according to Mrs Patriot computation.. An excessive and illegal levy took place. The amount illegally seized may be disputed as to computation but the tax agency does not dispute the facts that the levy was excessive or unauthorized.
12. Mrs. Patriot made dozens of phone calls and sent dozens of letters to the collection department- all which was ignored, as usual. Then, on May 25, 2006, she visited the collection department in Billings, Mont with a friend. The revenue office picked the phone and stopped the levy. This was an admission by the IRS that the garnishment was illegal for at least one day.
13. On March 16, 2007, the IRS sent her two checks totaling almost \$11,000. This is also an admission that the levy was excessive. The only issue remaining is the amount of damages plus an up to date computation by the tax service.

Defendant did act illegally and improperly

7. Defendant claims that Plaintiff must show that the IRS acquired Plaintiff's assets by acting illegally or by using improper methods. The facts and the law prove that Defendant did act illegally and improperly.
8. The IRS Notice of Levy dated May 14, 2001 (Exhibit D) and sent to Plaintiff states that 26 USC §6331(c) provides that a levy continues "until the amount due ... is fully paid." But not after that period.
9. The IRS Notice of Levy (Exhibit D) states that the lien is "for the amount that is owed." The Notice was for the amount that is owed. There was no notice for anything beyond what is owed. The IRS had confiscated \$53,895.78 (Exhibits E and F) – which is far more than what is allegedly owed (\$6,573.00) and stated on that Notice of Levy.

Moreover, Exhibit D clearly states that “this levy won’t attach funds in IRAs ... or any other retirement plans in your possession or control, unless it is signed in the block to the right.” As Exhibit D clearly shows, the Notice of Levy was never signed “in the block to the right.” Yet, the IRS levied Plaintiff’s pension in violation of guidelines stated on its own form. Also, the IRS did not extend to Plaintiff an opportunity for a CDPH before the levy, as stated in 26 USC §6330 and §6320.

10. Defendant admitted liability at least twice. On May 25, 2006, Mrs. Patriot met with IRS Agent Thomas Bentley in Billings, MT. The agent immediately ended the levy. Such action was a clear IRS admission that the levy was already in excess of \$1.00 or more. On March 16, 2007 the IRS sent Plaintiff two checks totaling \$10,954.18 (Exhibit A). This is clearly an unmistakable acknowledgment by the IRS that the levy was excessive or unauthorized in the amount which they levied.

11. However, another \$20,000 or \$40,000 needs to be released plus interest for the entire amount of The levy against Plaintiff’s pension and social security was conducted against IRS own guidelines, illegally, and in violations of Plaintiff’s due process. A levy for more than the alleged liability, for a day more than necessary, for a dollar more than necessary, or by methods not properly authorized is improper and illegal. Plaintiff had exhausted her administrative remedies. In this case, should not the Court grant Plaintiff all amounts taken from Plaintiff’s pension plus damages for such illegal tax collection?

Damages

12. In Defendant’s motion, Defendant has agreed that a taxpayer may collect damages for wrongful collection actions under 26 USC §7433. It has been shown herein that Defendant did act illegally and pursued wrongful collection measures.

13. In addition, Marilyn Patriot is sole supporter of herself and main financial supporter of her husband. The illegal levy consisted of 55% of her pension --- despite the fact that 26 USC §6331(h) states that a “levy shall attach up to 15 percent of any specified payment due to the taxpayer.” First, the IRS levied what Plaintiff allegedly owed. Then, the IRS kept the levy for approximately three more years. Such excessive and illegal levy caused financial hardship to Plaintiff and her family.

14. Plaintiff and her husband are elderly, unable to work. They live in an isolated area far from relatives and friends. To stop the robbery of her pensions, Plaintiff had to hire tax professionals to assist her. The extent and amount of the levy caused Plaintiff to suffer mental anguish, anxiety,

and emotional distress. As a result, Plaintiff succumbed to new ailments, such as high blood pressure (Exhibit G and H).

According to Plaintiff's letter to her attorney (Exhibit H), Plaintiff has been harassed by the IRS since early 1996. Plaintiff says: "I am now almost 73 years old and I have wasted so much time of the past 12 years answering their mail that life has literally passed me by during that time. I estimate 2,000+ hours of my life wasted – equivalent of 250 eight-hour days of working in an office.... All the time wasted and money taken represents countless lost opportunities. I wanted to become more proficient in music, but never did.... I never got the horse I wanted due to lack of money... My little sister was ill during most of this time. I wanted to take her to a clinic that might have helped her, but the money I would have used to do this was stolen from me. Too late now. She died in April of this year."

15. For how shall Defendant's harassment of Plaintiff continue and at what price? Defendant did not prove that it acted legally to levy Plaintiff's assets. Even if did, Defendant levied more than what was necessary and their action proved their wrongdoing. Then, for what reason and based on what legal justification does Defendant continue to refuse rectifying its wrongdoing? This Court must grant Plaintiff damages according to 26 U.S.C. §7433 and other relief the Court deems appropriate.

II. THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA HAS PROPER JURISDICTION TO HEAR THIS CASE

16. Defendant claims that "a suit by an individual for a tax refund can be maintained only in the district where a plaintiff resides." Defendant had misunderstood Plaintiff's complaint. The issue of venue that Defendant has raised deals with tax refund and tax refund suits. This case is not about tax refund under 26 U.S.C. §7422. This case is about illegal levy and damages under 26 U.S.C. §7433. As a result, Defendant's motion to transfer venue is inapplicable to this civil action.
17. The DC in DC has jurisdiction over any case filed in federal court, particularly if against a federal agency.
18. The tax refund suit which DOJ bases its case on is the alternative method to dispute a tax liability. No such dispute exists in this case. Nobody disagrees with Mrs. Patriot's self assessment. She has not filed an amended tax return nor any aspect of a Tax Refund Suit. According to 28 U.S.C. §1406(b), "nothing ... shall impair the jurisdiction of a District Court of any matter involving a party who does not interpose timely and sufficient objection to the venue." Since Defendant has not contested venue for the proper action brought by this case, Defendant's

failure amounts to a waiver. Defendant's motion is not "sufficient objection to the venue" and should not impair the jurisdiction of this Court.

19. Second, 28 U.S.C. §1404 states that "a district court may order any civil action to be tried at any place within the division in which it is pending." Since this civil case is pending in this Court, this Court may decide to try the case in this jurisdiction.

20. Third, 28 U.S.C. §1331 states that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution..." The Fifth Amendment of the U.S. Constitution states that "no person shall be deprived of life, liberty or property without due process of law." Plaintiff's pension was levied more than the legal limit without any court order, due process of law, and/or Plaintiff's prior consent. Therefore, this Court must hear Plaintiff's plea.

21. Plaintiff is entitled to all the protections and immunities under the law. If Plaintiff does not have an attorney to represent her in her district, and if Plaintiff is incapable of representing herself before a court, then it would be in the interest of justice to hear Plaintiff's case in any jurisdiction where she can be represented and heard. Protecting Plaintiff's constitutional rights outweigh all arguments made by Defendant.

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394; *Louisville & N. R. Co. v. Schmidt*, 177 U.S. 230, 236, 44 S. L. ed. 747, 750, 20 Sup. Ct. Rep. 620; *Simon v. Craft*, 182 U.S. 427, 436, 45 S. L. ed. 1165, 1170, 21 Sup. Ct. Rep. 836. "It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552. (1965). "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Matthews v. Eldridge*, 424 U.S. 319 (1976).

22. Neither party is contesting the assessment of the taxes. That issue is done and over with and highly-paid DOJ attorney should learn the facts in the case before filing motions. Neither party disputes the calculation of the tax liability as both parties agree on Mrs. Patriots tax returns prepared by an expert.

23. Plaintiff stated very clearly her cause of action: unauthorized and excessive levy for \$30 to \$50,000 wrongfully taken, plus interest, damages, costs, etc. She has shown that illegal acts were committed against her on a monthly basis for three years. She has clearly listed the

improper collection activities which include taking \$50,000 extra from her pension. The collection department did not follow the "prescribed methods of acquiring assets" because they did not stop the levy when all the tax debt was collected.

24. Contrary to the DOJ claim, Plaintiff did not file two separate causes of action nor a TRS. She only filed one claim which is for damages under IRC~ 7433.

25. The government would save much money by keeping this case in DC . The IRS had already twice admitted liability in this case. The law is most clear: the government will pay all of Plaintiff cost and attorney's fees when she prevails. Every flight to Wyoming by Plaintiff's attorney will cost the government big bucks.

For reasons listed herein, the U.S. District Court for the District of Columbia has a jurisdiction to adjudicate this case and grant Plaintiff damages and other relief the Court deems appropriate.

Respectfully submitted,

Date: December 16, 2007

Attorney Elias