

U.S. DISTRICT COURT
DISTRICT OF N.H.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

DEC 21 AM 11:21

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|-----------------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA, |) | Case No.: No. Criminal No. 1:06-cr- |
| |) | 00071-SM |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| ELAINE A. BROWN and, EDWARD LEWIS |) | |
| |) | |
| BROWN, |) | |
| |) | |
| Defendant |) | |

NOTICE OF MOTION AND MOTION TO DISMISS

DUE TO LACK OF PERSONAL JURISDICTION

The Defendants in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of their motion to Dismiss the Indictment and the included memorandum. Officers of the court are hereby noticed of their continuing duty under authority of the supremacy clause; equal protection and full faith and credit clauses of the United States Constitution and the common law authorities of Haines v. Kerner, 404 U.S. 519-421, Platsky v. C.A.A., 953 F.2d 25, and Anastasoff v. United States, 223 F.3d 898)8th Cir. 2000). In Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In Platsky: the court errs if court

dismisses the pro se litigant without instructions of how pleadings re deficient and instructions to repair pleadings. In Anastasoff: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated.

This motion will be based on the Notice of Motion and attachments thereto, the Memorandum of Points and Authorities in support thereof and the record, papers and files in the above-entitled matter.

MOTION TO DISMISS

Edward L. Brown, natural man and Elaine A. Brown, natural woman, husband and wife, Defendants herein, move this court to dismiss the instant case on the following grounds:

1. The indictment fails to set forth any revenue taxable activity by the defendants which would make them subject to (liable for) any tax whatsoever.
2. The indictment fails to set forth any revenue taxable activity by the defendants which would require them to pay any tax whatsoever.
3. The indictment fails to set forth any revenue taxable activity by the defendant's employees that would make the employees subject to any tax whatsoever.
4. The indictment fails to set forth any statute that would make the defendant's employees subject to a mandatory withholding tax.
5. The indictment fails to set forth any statute that makes the defendant a withholding agent as defined by the Internal Revenue Code.

6. All charges derive from sections 7201 and 7202, and thus fall away.
7. The indictment thus fails to show that the defendants are within the purvue of the Internal Revenue Code, much less within the purvue of Sections 7201 and 7202, which appear in the indictment.
8. The indictment fails to state any evidencing fact that show intent in any of the charges.
9. The defects in this indictment cannot be cured by a bill of particulars.

SUMMARY

The indictment is replete with legal conclusions stripped of evidencing statements of fact, none of which apprise the defendants of the nature and cause of the accusation. Legal conclusions without supporting statements of fact fail to make a valid indictment. Furthermore, the indictment fails to state any statute, if any such statute exists, imposing any obligation whatsoever on the defendants.

MEMORANDUM OF POINTS AND AUTHORITIES

The House Congressional Record, March 27, 1943, page 2580 states:

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax.

In *Brushaber v. Union Pacific R.R.Co.*, 240 U.S. 1, 16-1916)

Chief Justice Edward Douglas White stated:

Moreover, in addition, the conclusion reached in the *Pollock Case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such.

Chief Justice White also held in *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916):

[B]y the previous ruling [*Brushaber Case*] it was settled that the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning [of our national government under the Constitution] from being taken out of the category of indirect taxation to which it inherently belonged..

Tyler v. United States, 281 U.S. 497, 502 (1930) states:

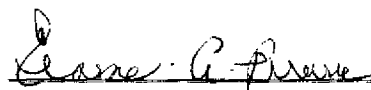
A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax.

WHEREFORE, as the indictment fails to show that the defendants engaged in any revenue taxable activity that would place them within the purvue of the Internal Revenue Code, it is respectfully requested that this court (1) Dismiss the indictment in this action as insufficient to show the Defendants to be personally within the jurisdiction of the Internal Revenue Code; (2) Enjoin the United States from any further harassment of Edward Brown and Elaine Brown; (3) Stay all further proceedings until such time as the United States complies with the organic law; or in the alternative certify the question

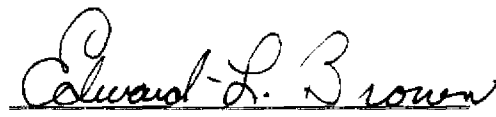
regarding the sufficiency of the indictment, regarding whether it comports with the requirements of proving personal jurisdiction, for an interlocutory appeal to the United States Court of Appeals for the First Circuit.

ORAL ARGUMENT DEMANDED

Respectfully submitted



Elaine-A. Brown



Edward-L. Brown

Dec. 17, 2006

Date

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was sent by USPS first class mail to William E. Morse, AUSA at 55 Pleasant St., Concord, N.H.



Edward-L. Brown

James R. Starr, Clerk
Clerk's Office
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941.

U.S. DISTRICT COURT
DISTRICT OF N.H.
CONCORD, N.H.

2006 DEC 21 A 11: 21

December 18, 2006

Via Certified Mail
#7006 0810 0002 7165 6878

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

Dear Mr. Starr:

Please timely file the enclosed Defendants' motion into the above captioned case file and make a suitable docket entry. I have already mailed a true copy of the enclosed motion to the United States Attorneys office.

With all due respect,



Edward Lewis Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire