

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

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

2007 JAN -3 P 2:17

<b>UNITED STATES OF AMERICA,</b>	)	<b>Case No.: No. Criminal No. 1:06-cr-00071-</b>
	)	<b>SM</b>
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>ELAINE A. BROWN and, EDWARD</b>	)	
<b>LEWIS BROWN,</b>	)	
<b>Respondents</b>	)	

**NOTICE OF MOTION AND MOTION TO DISMISS**  
**DUE TO VAGUENESS OF LAW**

Elaine A. Brown, natural woman, and Edward L. Brown, natural man, husband and wife, Respondents 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; 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. 519-521, Platsky v. C.I.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: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and instructions to repair pleadings. In Anastasoff litigants' constitutional Rights are violated when courts depart from precedent where parties are similarly situated.

**MOTION TO DISMISS INDICTMENT**

Elaine A. Brown and Edward L. Brown, Respondents herein, move this court under authority of the Constitution for the United States, Amendments V; VI; and settled case law cited herein to **DISMISS THE INDICTMENT** filed in the above captioned case on the ground that the uncertainty of the tax laws are excessively problematical and debatable, and the unsettled nature of this field of law precludes any conviction. When the law is vague, confusing, or in any way doubtful, ruling must be in favor of the accused.

**MEMORANDUM OF FACTS AND AUTHORITIES**

In United States v. Critzer, 498 F.2d 1160 (4<sup>th</sup> Cir. 1974), the court held:

“As a matter of law, defendant cannot be guilty of willfully evading and defeating income taxes on income, the taxability of which is so uncertain that even co-ordinate branches of the United States Government plausibly reach directly opposing conclusions. As a matter of law, the requisite intent to evade and defeat income taxes is missing. The obligation to pay is so problematical that defendant’s actual intent is irrelevant. Even if she had consulted the law and sought to guide herself accordingly, she could have had no certainty as to what the law required”.

“It is settled that when the law is vague or highly debatable, a defendant – actually or imputedly – lacks the requisite intent to violate it.” *Id.*, at 1162.

In United States v. Mallas, 762 F.2d 361 (4<sup>th</sup> Cir. 1985), the court stated that a prosecution for violating an unclear legal duty abridges principles of due process. See also United States v. Garber, 607 F.2d 92, 97-98 (5<sup>th</sup> Cir. 1979); United States v. Dahlstrom, 713 F.2d 1423, 1429 (9<sup>th</sup> Cir. 1983); United States v. Heller, 830 F.2d 150 (11<sup>th</sup> Cir. 1987); United States v. Harris, 942 F.2d 1125 (7<sup>th</sup> Cir. 1991).

**Unclear legal duties in other fields of law besides tax likewise prevent criminal convictions on due process grounds.** (Emphasis added) See United States v. Insko, 496 F.2d 204 (5<sup>th</sup> Cir. 1974); People v. Dempster, 396 Mich 700, 242 N.W.2d 381 (1976); United States v. Anzalone, 766 F.2d 676, 681-82 (1<sup>st</sup> Cir. 1985); United States v. Denmark, 779 F.2d 1559 (11<sup>th</sup> Cir. 1986); United States v. Varbel, 780 F.2d 758, 762 (9<sup>th</sup> Cir. 1986); United States v. Dela Espriella, 781 F.2d 1432 (9<sup>th</sup> Cir. 1986); and United States v. Larson, 796 F.2d 244 (8<sup>th</sup> Cir. 1986).

Some courts hold that an income tax is a direct property tax while others hold that it is an excise tax and that income is not property. While the position that the income tax is a direct tax prevails in the Fifth, Seventh, Eighth and Tenth Circuits, the Sixth Circuit holds that it is an indirect tax. Meanwhile, in the Second Circuit, the existing authority illogically claims that the tax is both.

If the courts of this nation cannot identify what is the nature of this ephemeral item known as income, then how can the American people? While in Critzer the difference of opinion existed between two government agencies, here the difference of opinion is among many different courts, a situation far more serious than that presented in Heller. Aren't we being subjected to a monumental due process problem far bigger than that to which Mrs. Critzer was subjected?

In the Sixth Circuit, United States v. Gaumer, 972 F.2d 723, 725 (6<sup>th</sup> Cir. 1992), the court declared the income tax to be an excise; yet in Jack Cole Co. v. MacFarland, 337 S.W. 2d 453, 455-456 (Tenn.1960), the Tennessee Supreme Court held that an excise tax cannot be used to tax the right to earn a living. Which authority do the people of Tennessee follow? If they follow the work of their own state court, they might be charged with a tax crime, yet they have the right to rely upon the work of the courts, even when erroneous; see United States v. Albertini, 830 F.2d 985, 989 (9<sup>th</sup> Cir. 1987). In the Eighth Circuit where United States v. Francisco, 614 F.2d 617, 619 (8<sup>th</sup> Cir. 1980), holds that an income tax is a direct property tax, in Missouri, which is within the Eighth Circuit, the Missouri Supreme Court held in Ludlow-Saylor Wire Co. v. Wollbrinck, 275 Mo. 339, 205 S.W. 196 (1918) that an income tax is an excise. How do the people of Missouri deal with this discrepancy? These discrepancies exist nation-wide.

In addition to all the above, another fundamental problem is the question of which statute controls the duty to file income tax returns. This question is also subject to judicial dispute. In Commissioner v. Lane-Wells Co., 321 U.S. 219, 222, 64 S.Ct. 511, 513 (1944), the Court noted that §54 of the 1939 Internal Revenue Code, the predecessor for Internal Revenue Code §6001, related to the filing requirement; see also Updike v. United States, 8 F.2d 913, 915 (8<sup>th</sup> Cir. 1925). In True v. United States, 354 F.2d 323, 324 (Ct.Cl. 1965); United States v. Carlson, 260 F.Supp. 423, 425 (E.D.N.Y. 1966); White v. Commissioner, 72 U.S.T.C. 1126, 1129 (1979); McCaskill v. Commissioner, 72 U.S.T.C. 689, 698 (1981); Counts v. Commissioner, 774 F.2d 426, 427 (11<sup>th</sup> Cir. 1985); Blount v. Commissioner, 86 U.S.T.C. 383, 386 (1986); and Beard v. Commissioner, 793 F.2d 139 (6<sup>th</sup> Cir. 1986), these courts held that Internal Revenue Code §6011 related to the filing requirement.

In United States v. Moore, 627 F.2d 830, 834 (7<sup>th</sup> Cir. 1980); United States v. Dawes, 951 F.2d 1189, 1192, n. 3 (10<sup>th</sup> Cir. 1991); and United States v. Hicks, 947 F.2d 1356, 1360 (9<sup>th</sup> Cir. 1991), those courts held that Internal Revenue Code §§6011 and 6012 governed this duty. In contrast, the cases of Steinbrecher v. Commissioner, 712 F.2d 195, 198 (5<sup>th</sup> Cir. 1983); United States v. Bowers, 920 F.2d 220, 222 (4<sup>th</sup> Cir. 1990); and United States v. Neff, 954 F.2d 698, 699 (11<sup>th</sup> Cir. 1992), held that only §6012 governed this duty. But in United States v. Pilcher, 672 F.2d 875, 877 (11<sup>th</sup> Cir. 1982), none of the above sections were mentioned and it was held that §7203 required returns to be filed. It is very apparent that there is even a diversity of opinion among judges regarding which sections of the Internal Revenue Code govern the requirement to file income tax returns.

The observation of the dissenting judge in Culliton v. Chase, 25 P.2d at 89-90, that this “disagreement of the courts and judges on identical problems seems to afford the highest proof that ‘reasonable doubt’ does exist,” is particularly appropriate here. If American courts cannot decide such fundamental questions as what is the nature of the income tax and which section of the Internal Revenue Code requires the filing of an income tax return, then it is obvious that a serious **due process problem** exists within the federal income tax laws. (Emphasis added)

In 1913 during the debate on the first income tax act under the 16<sup>th</sup> Amendment, Senator Elihu Root commented about the complexity of that first law:

I guess you will have to go to jail. If that is the result of not understanding the Income Tax Law I shall meet you there. We shall have a merry, merry time, for all of our friends will be there. It will be an intellectual center, for no one understands the Income Tax Law except persons who have not sufficient intelligence to understand the questions that arise under it. See *The United States Tax Court: An Historical Analysis*, page 12 by Harold Dubroff. Published by CCH.

In Cheek v. United States, 498 U.S. 192, 199, 201-202 (1991), it was held that there must exist a law that is definite and knowable by the defendant, and that this definite and knowable law must impose a definite and knowable legal duty .

### CONCLUSION

**WHEREFORE**, the Respondents demand the court issue an ORDER to DISMISS THE INDICTMENT made in this case due to denial of due process because of vagueness and confusion of the Internal Revenue laws., as they do not conform with above cited case law requiring definite and knowable principles. This court has a non-discretionary duty to grant this motion and (1) Order the Dismissal of the failed indictment filed in this manner; (2) Enjoin the United States from any further harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States complies with the organic law.

### **ORAL ARGUMENT DEMANDED**

Date Dec. 30, 2006

Prepared and submitted by:

Elaine A. Brown

Elaine A. Brown

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

Edward L. Brown

Edward L. Brown

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

**CERTIFICATE OF SERVICE**

I, Edward L. Brown, certify that I delivered via postage paid First Class U.S. Mail Return Receipt, a true and correct copy of the above and foregoing **NOTICE AND MOTION** to the office of the Clerk of Court U.S. District Court, District of New Hampshire, at 55 Pleasant St., Concord, NH 03301-0001 for entry into the record and to William E. Morse in the office of THOMAS P. COLANTUONO, the United States Attorney for the District of (NH) located at 53 Pleasant St., Concord, NH 03301-0001.

Date December 30, 2006

Edward L. Brown

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.

January 3, 2007

By Hand

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

Received on this date, Respondent's **NOTICE OF MOTION AND MOTION TO DISMISS DUE TO VAGUENESS OF LAW.**

---

Signature

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

December 30, 2006

By Hand

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

Dear Mr. Starr:

Please timely file the enclosed Respondents' 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