UNITED STATES TAX COURT

WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.,	)	
Petitioner,	)	
v.	)	Docket No. 20998-10 "L"
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

PETITIONER files this Brief in Opposition to Respondent's Motion for Summary Judgment, dated September 8, 2011. This OPPOSITION is accompanied and supported by the statements of fact in a sworn AFFIDAVIT BY ROBERT L. SCHULZ , executed September 29, 2011 and the sworn AFFIDAVIT BY JUDITH DIEVENDORF executed September 27, 2011.

RESPONDENTS LACK JURISDICTION: THE REVOCATION OF EXEMPT STATUS AND NOTICE OF DEFICIENCY ARE BARRED BY THE DOCTRINE OF RES JUDICATA

The final judgment of the United States District Court on August 14, 2007 (affirmed by the Court of Appeals on February 22, 2008), in a civil case brought by Respondent against

Petitioner,[1] is conclusive upon the parties in any subsequent action such as the instant case, involving the same cause of action. The general rule is that a plaintiff who has prosecuted one action against a defendant and obtained a valid final judgment is barred by *res judicata* from prosecuting another action against the same defendant where:

(a) the claim in the second action is one which is based on the same factual transaction that was at issue in the first;

(b) the plaintiff seeks a remedy additional or alternative to the one sought earlier; and

(c) the claim is of such a nature as could have been joined in the first action.

Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action.

"The preclusive effect of a federal-court judgment is determined by federal common law," and "is defined by claim preclusion and issue preclusion, which are collectively referred to as 'res judicata.'" *Taylor v. Sturgell,* 553 U.S. 880, 891-92, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008)**.** Claim preclusion "forecloses successive litigation of the very same claim, whether or not re-litigation of the claim raises the same issues as the earlier suit." *Id.* at 892 (quoting *New Hampshire v. Maine,* 532 U.S. 742, 748, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001)) (internal quotation marks omitted). "Issue preclusion, in contrast, bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Id.* (quoting ***New Hampshire*, 532 U.S. at 748-49**).

Under federal law, claim preclusion "bars later litigation if an earlier decision was (1) a final judgment on the merits, (2) by a court of competent jurisdiction, (3) in a case involving the

[1] *U.S. v. Schulz, WTPF and WTPC*, Northern District of New York, Case No. 07-cv-352 9. We the People Congress, Inc., is the Petitioner in a related case before this Court, Docket No. 20999-10"L".

same parties or their privies, and (4) involving the same cause of action." *EDP Med. Computer Sys., Inc. v. United States,* 480 F.3d 621, 624 (2d Cir. 2007) (alteration and internal quotation marks omitted). Although claim preclusion is an affirmative defense that must ordinarily be raised in a party's answer or else is waived, a district court may in certain circumstances raise the issue *sua sponte.* See *Salahuddin v. Jones,* 992 F.2d 447, 449 (2d Cir. 1993) (per curiam).

In sum, claim preclusion generally refers to the effect of a prior judgment in foreclosing successive litigation of the very same claim, whether or not re-litigation of the claim raises the same issues as the earlier suit. *New Hampshire v. Maine*, 532 U.S. 742, 748.

Here, the cause of action that gave rise to the civil case decided in 2007 is exactly the same as the cause of action which has given rise to the instant case – the distribution of materials judged to be "false and misleading," concerning corporate obligations to withhold federal taxes, a "non-exempt" activity by tax-exempt, 501(c)(3) Petitioner.

In its 2007 case, Respondent did not seek relief in the form of a revocation of Petitioner's tax-exempt status (retroactive to 2003, no less), did not seek an order directing Petitioner to re-file its 2003 tax return as a Form 1120, did not seek an assessment or recovery of any damages and so on - "the thing has been decided."

The principle of res judicata is meant to relieve parties of the costs and vexation of multiple lawsuits, conserves judicial resources and, by preventing inconsistent decisions, encourage reliance on adjudication. *Allen v. McCurry*, 449 U.S. at 94.

Exhibit X is a copy of the final order of the District Court in *U.S. v. Schulz, WTPF and WTPC*, Case No. 07-cv-352, dated August 9, 2007, laying out the extent of all penalties, as requested by Respondent IRS, and permanently enjoining Petitioner We The People Foundation ("WTPF") and We The People Congress ("WTPC") from distributing additional copies of

certain literature, all the result of an activity of WTPF's and WTPC's, deemed by that Court to be in violation of and subject to penalty under of 26 U.S.C. Section 6700. Exhibit X includes a copy of Petitioner's Motion for Reconsideration which was denied.

Exhibit Y is a copy of the final order of the U.S. Court of Appeals for the Second Circuit in *U.S. v. Schulz, WTPF and WTPC*, Case No. 07-cv-352, dated February 21, 2008, affirming the decision of the District Court, together with Petitioner's Motion for Reconsideration which was denied.

Included in the package sent to Petitioner WTPF by Respondent's Revenue Officer Tave on February 12, 2010 was an unsigned and undated "Notice of Deficiency" (Schulz Affidavit, Exhibit Q-3) which had one enclosure, an undated and unsigned Form 886A, which cited the issue adjudicated in *U.S. v. Schulz, WTPF and WTPC*, Case No. 07-cv-352 9 as the basis for Respondent's revocation of WTPF's exempt status and, in turn Respondent's conversion of WTPF's Form 990 tax return for 2003 to a Form 1120 tax return, Notice of Deficiency, assessment of a tax against WTPF and the Lien and Levy action against WTPF's assets.

The 886A read in relevant part:

> "On August 14, 2007, the United States District Court of the Northern District of New York permanently enjoined the organization from violating 26 U.S.C. Section 6700 based on their distribution of false and misleading materials concerning corporate obligations to withhold federal taxes.
>
> "On February 22, 2008, the United States Court of Appeals for the Second Circuit affirmed the decision of the Northern District Court of New York…
>
> "Section 6700 of the Internal Revenue Code imposes a penalty upon persons who promote abusive tax shelters…."

The Notice of Deficiency was a result of the revocation of WTPF's exempt status.

Having had a full opportunity to make its case for revocation of exemption in the 2007 case (retroactive, no less), Respondent is not allowed to re-litigate the claim or issue. To do so would violate Petitioner's interest in finality of dispute settlements. See for example, *A. DUDA & SONS COOPERATIVE ASSOCIATION v. UNITED STATES*, No. 73-1246, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, 495 F.2d 193; 1974 U.S. App. LEXIS 8256; 74-2 U.S. Tax Cas. (CCH) P9489; 34A.F.T.R.2d (RIA) 5092, June 6, 1974.

RESPONDENT LACKS JURISDICTION; NOD WAS INVALID, NULL AND VOID

Respondent's WTPF "Notice of Deficiency" for the taxable period ending December 31, 2003 was invalid, null and void, for **there was no Form 4549-E attached and no Form 13496 attached**, further removing Respondent's jurisdiction over Petitioner's Form 990 tax return for 2003.

There are two different versions of WTPF's invalid "Notice of Deficiency": one sent to WTPF by Revenue Officer Linda Tave on February 12, 2010 that was unsigned, undated, did not have a column labeled "Penalty," included Form 886-A but did not include the legally required Form 4549-E or Form 13496; and a second version sent to Petitioner WTPF by Thomas Conley, the AO, on July 8, 2010 that was allegedly signed and dated on December 29, 2008 (the font type and size was different from that used in the rest of the Notice in addition to the address of the Notice) , did have a column labeled "Penalty," but did not include Form 886-A, Form 4549-E or Form 13496.

See Schulz Affidavit Exhibit Q-3 and Exhibit FF-2 for copies of the invalid "Notice of Deficiency" sent to WTPF by Tave and Conley, respectively.

Important, however, is neither version of the Notice of Deficiency included either Form 4549-E, "Income Tax Examination Changes" or Form 13496, "IRC Section 6020(b) Certification" or any other form that an authorized officer or employee signs and uses to identify a document (or set of documents) as a section 6020(b) return.

Therefore, WTPF's Notice of Deficiency is "invalid" according to Treas. Reg. Section 301.6020-IT, *Cabirac v. Commissioner*, 120 T.C. 163 (2003), *Spurlock v. Commissioner*, T.C. Memo. 2003-124, the IRS's Office of Chief Counsel Notice CC 2007-005, dated February 4, 2007, which includes a sample copy Form 13496, "IRC Section 6020(b) Certification" (see Schulz Affidavit, Exhibit X), and the Federal Register, dated February 20, 2008 (Schulz Affidavit, Exhibit Y).

In law, the word "invalid" means null; void; without force or effect; lacking in authority. *West's Encyclopedia of American Law, edition 2.* Void means that which is null and completely without legal force or binding effect. *West's Encyclopedia of American Law, edition 2.*

Quoting from CC 2007-005 (see Schulz Aff., Exhibit X, page 2):

> "Temp. Treas. Reg. section 301.6020-IT provides that a document (or set of documents) signed by an authorized internal revenue officer or employee is a return under section 6020(b) if the document (or set of documents) (1) identifies the taxpayer by name and taxpayer's identification, (2) contains sufficient information from which to compute the taxpayer's tax liability, and (3) **purports to be a return**. **A Form 13496, IRC Section 6020(b) Certification, or its automated counterpart, the IRC Section 6020(b) ASFR Certification, or any other form that an authorized officer or employee signs and uses to identify a document (or set of documents) as a section 6020(b) return is, along with the identified document(s), a valid section 6020(b) return if the combined material contains all of the necessary information required by the temporary regulation to qualify as a section 6020(b) return**…

"As described in IRM 20.1.2.1.4(9), to prepare the return under section 6020(b), the Service **attaches a completed Form 13496 to other documents, which, when combined, satisfy each of the elements of a valid section 6020(b) return**. **Specifically, the package of documents consists of (1) the Form 13496, signed and dated; (2) Form 4549, Income Tax Examination Changes; and (3) Form 886-A, Explanation of Items.** The latter two forms, which must be generated on or before the date the Form 13496 was signed, contain the information necessary to calculate the taxpayer's liability for the period and the amount of the failure-to-pay addition to tax." (emphasis added by Petitioner).

Quoting from Federal Register, February 20, 2008 (Schulz Aff., Exhibit Y, pages 1-3):

"SUMMARY: This document contains final regulations relating to returns prepared or signed by the Commissioner of other Internal Revenue Officers or employees under section 6020 of the Internal Revenue Code. These final regulations provide guidance for preparing a substitute for return under section 6020(b). **Absent the existence of a return under section 6020(b), the addition to tax under section 6651(a)(2) does not apply to a nonfiler. These final regulations affect any person who fails to file a return**…

"In *Cabirac v. Commissioner*, 120 T.C. 163 (2003), *aff'd in an unpublished opinion*, No. 03-3157 (3rd Cir. Feb 10, 2004), and *Spurlock v. Commissioner*, T.C. Memo. 2003-124, the Tax Court found that the Service did not establish that it had prepared and signed a return in accordance with section 6020(b). In *Spurlock*, the Tax Court held that a return for section 6020 purposes must be subscribed, contain sufficient information from which to compute the taxpayer's tax liability**, and the return and any attachments must, "purport to be a return.** *Spurlock*, T.C. Memo 2003-124 at 27…

"The regulations provide that a document (or set of documents) signed by an authorized Internal Revenue Officer or employee is a return under section 6020(b) if the document (or set of documents) identifies the taxpayer by name and the taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, **and the document (or set of documents) purports to be a return under section 6020(b).** A Form 13496, "IRC Section 6020(b) Certification,"

> or any other form that an authorized Internal Revenue Officer or employee signs and uses to identify a document (or set of documents) containing the information set forth in this preamble as a section 6020(b) return, and the documents identified, **constitute a valid section 6020(b) return**….
>
> "*Example 2*. Same facts as in *Example 1*, except that, after performing the examination, X **does not …sign and complete the Form 13496 nor associate the forms explaining examination changes with any other document. Because X did not sign any document stating that it constitutes a return under section 6020(b) and the documents otherwise do not purport to be a section 6020(b) return, the documents do not constitute a return under section 6020(b). Therefore, the Service cannot determine the section 6651 (a)(2) addition to tax against nonfiler A for A's 2003 taxable year on the basis of these documents.**" (Petitioner's emphasis).

There was no Form 13496 or any other form, identifying the Notice of Deficiency as a section 6020(b) return, included with the Notice of Deficiency sent to WTPF from Respondent's Appeals Office on July 8, 2010 (or even mentioned in the respective list of Enclosures).

This means there was no valid Notice of Deficiency for WTPF. The 501(c)(3) exempt status remains intact, the tax is not due and the notices of lien and levy are null and void.

The AO refused to give Petitioner a hearing on the issue, either in-person or by phone, incorrectly claiming the issue was included in IRS Notice 2008-14 as a "specified frivolous position" or reflected a desire to delay or impede federal tax administration. He demanded Petitioner withdraw the issue.

Finally, it is important to note that Respondent's AO also failed to include any notice of a final determination regarding exempt status (signed and dated or not) in his letter of July 8, 2010 (See Exhibit FF-2).

RESPONDENT LACKED JURISDICTION; STATUTE OF LIMITATIONS HAD TOLLED

WTPF's "Notice of Deficiency" for the taxable period ending December 31, 2003 was void *ab initio*, for **it was untimely**, further removing Respondent's jurisdiction over Petitioner's Form 990 tax return for 2003.

WTPF filed its 990 tax return for the year ended December 31, 2003 on or about August 15, 2004.

Unless WTPF and the IRS agreed, in writing**,** to an extension, any examination of the activities and returns of WTPF for 2003 had to be completed on or about August 15, 2007 (thirty-six months from the date of the original filing of the tax return).

On February 26, 2006, Respondent wrote to WTPF (See Exhibit H-1), saying:

> "We plan to conduct an examination for [the year ended Dec 31, 2003]…"
>
> "We examine returns to verify the correctness of income or gross receipts, deductions and credits, and to determine if the organization is operating in the manner stated and for the purpose set forth in its application for recognition of exemption."
>
> "When we complete the examination, we will explain our recommendations and how they may affect your exempt status or tax liability, such as employment, excise or unrelated business income taxes. You should fully understand any recommended changes and their ramifications." (Emphasis added).

Respondent's Agent Michael F. Sciame undertook a complete examination of WTPF's Form 990 tax return for the year 2003 at the Albany NY office of WTPF's accounting firm, Dievendorf & Company.

On May 15, 2007, Respondent's Agent Sciame sent a letter for WTPF (Exhibit J-1). The letter read in relevant part:

> "The statute of limitations period allowed by law for assessing additional tax on your federal tax return will expire soon. We are requesting your consent to extend the statute of limitation period for [tax year ended Dec 31, 2003]."
>
> "We are enclosing Form 872 used to extend the statute of limitations period. Please sign and return …**Upon acceptance, we will return a signed copy for your records."** (Emphasis added by Petitioner).

Attached to the letter was a Form 872, "Consent to Extend the Time to Assess Tax." The form provided for a "fixed-date consent" setting a specific expiration date for the extension of the statute of limitation to December 31, 2008. (See Exhibit J-1).

I told Mr. Sciame I did not want to sign the Form 872, wanting the examination of WTPF's Form 990 tax return for 2003 to end as soon as possible and seeing no reason to grant Respondent any more time than the statutes allow.

On July 3, 2007, Mr. Sciame again pressured me to sign the 872, telling me, "The order to audit WTPF came from high up. If you do not sign the Form 872, the Agency will come down hard on you immediately, making your life very difficult," or words to that effect.

I looked at my accountant, Judith Dievendorf, who shrugged her shoulders and said, "We have nothing to hide." I told Mr. Sciame I wanted him to sign first, then I would sign and give him a copy of the document with our signatures on them. He told me he could not sign the 872 because he did not have the authority to approve and sign it. He told me someone in Washington, D.C. would have to approve and sign the Form. I told him I would not send him off with my signature on the Form without his signature or his word that, in fact, the Form with my consenting signature would be reviewed soon and, if accepted, **I would receive a signed copy soon after so I would not be left wondering beyond August 15, 2007 if the examination had been completed or if the completion date had been extended beyond the period of the thirty**

six month statute of limitations. He assured me: a) he would immediately submit the 872 with my signature for approval by the Agency; b) the Agency would act quickly; and c), he meant what he said in his May 15, 2007 letter, to wit, "Upon acceptance, we will return a signed copy to you for your records."

On the condition that Sciame's letter of May 15, 2007 to WTPF was legally part and parcel of the WTPF Form 872, I signed the Form on July 3, 2007.

WTPF's signature agreeing to extend the 36 month statute of limitations was conditioned upon receiving an Agency approved and signed copy of the 872 before the normal statute of limitations tolled on or about August 15, 2007.

Respondent says, "petitioner and respondent timely executed an agreement in writing" (Mot. Paragraph 33. However, Respondent makes no reference to Sciame's May 15, 2007 letter, which was legally linked to the 872 that had my signature on it. Neither does Respondent make any reference to the fact that Respondent did not mail the 872 to Petitioner until August 26, 2010! (see Exhibit HH-2).

Respondent did not send WTPF a signed Form 872 in 2007.

An agreement is an understanding or an arrangement between two or more organizations, the terms in which a contract or bargain is set down in writing. In this case the agreement between Respondent and Petitioner included writings in two documents (assuming Respondent actually signed the 872), which, in any case was not fulfilled by Respondent who did not send Petitioner a signed copy anytime soon after July 3, 2007.

Therefore, there was no agreement to extend the statute of limitations for the completion of the examination and issuance of any Notice of Deficiency beyond August 15, 2007.

There was no sign, beyond July of 2007, of an ongoing examination of WTPF.

The AO refused to give Petitioner a hearing on the issue, either in-person or by phone, falsely claiming the issue was included in IRS Notice 2008-14 as a "specified frivolous position" or reflected a desire to delay or impede federal tax administration. He demanded Petitioner withdraw the issue.

DUE PROCESS INTEREST VIOLATED

On July 8, 2011, Respondent's Appeals Officer, Thomas Conley sent WTPF a letter. Attached to the letter was a "Notice of Deficiency" dated December 29, 2008, together with an envelope, postmarked December 30, 2008, marked "Return to Sender" for the reason "refused." The "Notice of Deficiency did not have any attachments or enclosures. See Exhibit FF-2

The Post Office erred in marking the envelope "refused," rather than "unclaimed." See Affidavits by Robert Schulz based on his conversations with Glens Falls Post Office Highway Contract Carrier William Jennings (Exhibit II-2) and with a Supervisor at the Glens Falls Post Office, Jodi Fiorini (Exhibit JJ-2).

WTPF was not in a position to accept or "refuse" or ignore the "Notice of Deficiency" during the month of January 2009. Robert Schulz was on a speaking tour and not in the area.

If the Notice of Deficiency was, in fact, dated December 29, 2008, mailed in the envelope postmarked December 30, 2008, sent to 2458 Ridge Road, Queensbury, NY, and returned to the IRS by the Post Office with the notifications "1-2, 1-12,1-22" as indicated, it could not have been "refused." It could only have been unclaimed.

Since its conception, Robert Schulz has always managed all the business of WTPF from his home at 2458 Ridge Road, Queensbury, NY 12804.[2]

On December 24, 2008, Schulz left for an extended speaking tour across the country (accompanied by his wife), after making arrangements for WTPF's mail to be held until his returned on or about February 1, 2009. He spent Christmas eve in Front Royal, Virginia at the Holiday Inn and proceeded by automobile from there to Austin, Texas for a visit with relatives and then on to the first of his scheduled speaking engagements in San Antonio on January 3, 2009, stopping in Kingston TN, and Austin, TX. Exhibit W includes copies of Hotel, gas and meal receipts accumulated during that part of his road trip.

The schedule (See Schulz Affidavit, paragraph 35) is evidence of the fact that Schulz and, therefore, WTPF were not be in a position to "refuse" or accept or ignore said envelope at the Glens Falls Post Office during the month of January, 2009. The schedule was posted on the website **www.givemeliberty.org** on December 24, 2008, for all to see, including Respondent. It is still there. Additional evidence of the fact that Schulz, and therefore WTPF were not in a position on 1-2, 1-12 and 1-22, to have "refused" or claimed or ignored the envelope, and could not have refused, claimed or ignored said envelope before they were returned to Queensbury is available upon request in the form of hotel, gas and meal receipts accumulated during his road trip during the entire month of January, 2009.[3]

Given the fact that Schulz departed the area on December 24, 2008, and returned on or after February 1, 2009, and the entire certified mail process of the "Notice of Deficiency" had begun and ended prior to his return date, Schulz had no awareness of what was taking place.

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[2] As well as its predecessor not-for-profit corporations, the Tri-County Taxpayers Association, which was incorporated in 1979, and the All-County Taxpayers Association, incorporated in 1992.

[3] The information on the envelope indicates it was returned to and received by the Sender on 1/27/08.

The application and suspension of a "license" to operate as a tax exempt organization, a property interest, must comport with the due process requirements of the *fifth amendment of the federal Constitution*. WTPF's 501(c)(3) status has been a **vested**, **vital, protected, property and therefore "Liberty" interest** and part of its life-blood since its conception.

As such, especially given the lack of any apparent on-going examination activity since July of 2007 (i.e., for 18 months), Petitioner's Property and Due Process interests required more notice of the "Notice of Deficiency" than "certified mail sent to the last known address," such as direct notice by advance or follow up letters sent to Petitioner's address during the 30 or 60 days following the mailing of the certified letter, or advance or follow up phone calls, faxes, or additional means of personal service, in the event the "Notice of Deficiency" went unclaimed.

Respondent knew who WTPF's attorney was (Mark Lane) and how to contact him due to the civil case *U.S. v. Schulz, WTPF and WTPC*, Northern District of New York, Case No. 07-cv-352 9, litigated in 2007-2008.

Respondent knew who WTPF's accountant was (Judith Dievendorf) and how to contact her due to Respondent's audit of WTPF in 2006-2007.

Based on Respondent's thorough audit of WTPF in 2006-2007, the extensive set of Declarations and evidence submitted to the Court in 2007 by Schulz in *U.S. v. Schulz, WTPF and WTPC,* and Respondent's surveillance of WTPF's website, Respondent knew when they mailed the "Notice of Deficiency" to Petitioner on December 30, 2008, that Schulz operates WTPF from his home, that WTPF had no employees, and that Schulz (along with his wife) would be away from home and the entire area on an extended speaking tour during the month of January 2009, a schedule that was promoted heavily to the public on Petitioner's website and to all on Petitioner's extensive mailing list. In other words, Respondent knew there would be no-one at

Petitioner's address to claim the "Notice of Deficiency" during the entire month of January, 2009.

Absent any notice or knowledge that the examination begun in 2006 was on-going past August 2007, no special mail was expected and no special arrangements had been made to look for special mail.

The record clearly demonstrates **Petitioner could not have "refused" to accept the "Notice of Deficiency" as alleged**. **The record shows it was "Unclaimed," not refused or ignored.** (Schulz Affidavit, paragraphs 31-36)

The AO refused to give Petitioner a hearing on the issue, either in-person or by phone, falsely claiming the issue was included in IRS Notice 2008-14 as a "specified frivolous position" or reflected a desire to delay or impede federal tax administration, demanding Petitioner withdraw the issue.

In other words, WTPF did not have a "reasonable opportunity" to claim much less contest the government's "Notice of Deficiency."

As this case demonstrates, WTPF's penalties of prosecution risked by lack of knowledge of and unavailability to accept certified mail containing a "Notice of Deficiency" are so severe that the statutory procedure (simple certified mail to last known address, nothing more) amounts to a denial of justice. See *Schulz v IRS*, 413 F.3d. 297 (2d Cir. 2005), at page 6-7, citing Reisman, 375 U.S. 440, 446 (1964).

The imposition of penal consequences for failure to claim and comply with an IRS Notice of Revocation of tax exempt status and Notice of Deficiency, Notice of Tax Assessment, Notice of Lien or Notice of Levy, requires review by a federal court of the merits of the Revocation,

Deficiency, Assessment, Lien and Levy. Where the merits are upheld, after an adversarial proceeding through which the taxpayer can test the validity of the Revocation, Deficiency, Assessment, Lien and Levy, punitive or coercive sanctions may be imposed after a reasonable opportunity to comply with a court order of enforcement. See for guidance, *Schulz v IRS*, 413 F.3d. 297 (2d Cir. 2005), at page 6-7, citing Reisman, 375 U.S. 440, 446 (1964).

Under the facts and circumstances of this case, to allow the imposition of penal consequences, including revocation of exempt status, tax assessment, lien and levy for failure to comply with Respondent's notice or directive renders the statutory enforcement scheme unconstitutional unless Petitioner had an opportunity to seek judicial review of the notices and directives *before* placing the taxpayer at risk of punishment. See for guidance, *Schulz v IRS*, 413 F.3d. 297 (2d Cir. 2005), at page 6-7, citing Reisman, 375 U.S. 440, 446 (1964).

Any legislative scheme (such as notice by certified mail without advance, contemporary or subsequent notice by other means such as phone, e-mail, personal contact, contact of known attorney or accountant) that denies subjects an opportunity to seek judicial review of an administrative order that revokes tax exempt status -- the subject's lifeblood, retroactively for five years no less, except by "refusing" to comply, and so as to put themselves in immediate jeopardy of possible penalties so heavy as to prohibit resort to that remedy, runs afoul of the due process requirements of the Fifth and Fourteenth Amendments. See for guidance*, Schulz* citing *Oklahoma Operating Co. v. Love,* 252 U.S. 331, 333 (1920).

Thus, the purported revocation of WTPF's exempt status and "Notice of Deficiency" was "administratively issued but their enforcement is only by court authority in an adversary proceeding affording the opportunity for challenge and *complete protection* to the witness."

(emphasis in the original). See *Schulz*, citing *Donaldson v United States,* 400 U.S. 517, 525 (1971)

PETITIONER ACTED IN GOOD FAITH

On May 6, 2009, Respondent sent WTPF a "Notice of Tax Due," reflecting an assessment date of May 6, 2009. (Schulz Affidavit, Exhibit K-1)

On May 12, 2009, Respondent sent WTPC a "Notice of Tax Due," reflecting an assessment date of May 12, 2009. (Schulz Affidavit, Exhibit K-2)

Petitioner WTPF acted immediately.

On May 26, 2009, Schulz telephoned the IRS office that had mailed the May 6th and May 12th notices and spoke to a Miss Johnson (ID # 0153696), who connected Schulz to a Mr. Fryman (ID # 0197005).

Regarding WTPC, Agent Fryman told Schulz the IRS had obviously made a mistake because the IRS was still carrying WTPC as an exempt organization under 501c4. He told Schulz to send a letter to the EO Entity at IRS Mail Stop 6273, Ogden UT 84201, requesting they remove the 1120 filing requirement and replace it with a 990 filing requirement. On May 26, 2009, Schulz sent a letter requesting same, and reminding the IRS of the 872 consent agreement. (Schulz Aff., Exhibit L).

Regarding WTPF, Agent Fryman told Schulz there was a "special circumstance that he was not allowed to discuss." He said that he needed to refer Schulz's inquiry to Andrea Fleisher, his manager, who would contact WTPF in 30 days. On May 26, 2009, Schulz sent a letter to IRS requesting they replace the 1120 requirement with a 990 requirement and reminding them of the 872 consent agreement. (Schulz Aff., Exhibit M).

On September 3, 2009, the IRS responded to WTPF's letter dated May 26, 2009. The IRS letter, signed by Deborah Bingham of the Accounts Management Unit, **under the subject listed as "Form: 990**," said in relevant part (Schulz Aff., Exhibit N):

> "**We haven't resolved this matter because we haven't completed all the research necessary for a complete response**. We will contact you again within 45 days to let you know what action we are taking. You don't need to do anything further now on this matter." (Emphasis added by Petitioner).

On October 7, 2009, Respondent sent a second response to WTPF's letter dated May 26, 2009. The IRS letter, signed by Cindy Westcott, Manager of the Exempt Organization Determinations unit said in relevant part (Schulz Aff., Exhibit O):

> "This is in response to your May 26, 2009, request for information regarding your tax-exempt status. We have no record that your organization has been recognized as exempt from Federal income tax under Internal Revenue Code section 501 (a)."

On October 14, 2009, WTPF responded by letter to Ms. Westcott, saying in relevant part (Schulz Aff., Exhibit P):

> "Attached is a copy of the May 10, 2002 letter recognizing our organization as exempt under section 501(a). We have been filing annual 990s since then."

On December 10, 2009, Schulz telephoned IRS's Exempt Organizations unit at 1-877-829-5500 and spoke with Agent Wittwer (ID # 1758615). Schulz asked her if there was a problem with WTPF's tax exempt status. She said, "**I am unable to tell if WTPF is tax exempt or not**. I will have to refer the matter to a specialist who will get back to you in 30 days." (Emphasis added by Petitioner).

Through all of this, and until January of 2010, **Petitioner still had no notice or knowledge of Respondent's actions or intent**: an ongoing examination that appeared to have reached some sort of conclusion 2 ½ years after WTPF's and WTPC's last known

communication with the Respondent's Examination Office that eventually surfaced in January 2010, not as a communication regarding a desired retroactive revocation of WTPF's and WTPC's exempt status, conversion of their Form 990s to 1120s, and "Notice of Deficiency," but in a phone call from Respondent's Revenue Officer demanding, over the phone, a list of WTPF's and WTPC's assets for collection. The Court is respectfully requested to take judicial notice of the fact that Respondent is fully capable of noticing Petitioner by a variety of means when it suits their purpose to do so.

In addition, during all this time, Respondent accepted and approved each (annual) application by WTPF and WTPC for an extension of time to file their **Form 990s.** In addition, during all this time, Respondent accepted for filing WTPF's and WTPC's annual Form 990 tax returns. On information and belief, it is usual practice for the IRS to reject such applications and tax returns from an organization if there is a mismatch between the classification the organization puts on its filing and the classification the Agency identifies the organization as in its data base.

WTPF and WTPC have timely filed Form 990 tax returns every year since their conception in 1997 until the present. They have never received an IRS error message indicating the organizations were filing the incorrect entity type for the Federal ID.

For instance, on May 31, 2010, Respondent approved WTPF's and WTPC's APPLICATION FOR EXTENSION OF TIME TO FILE AN EXEMPT ORGANIZATION RETURN (FORM 990) for the tax year ending December 31, 2009. (See Exhibits T-1 and T-2).

As another example, Respondent approved WTPC's APPLICATION FOR EXTENSION OF TIME TO FILE AN EXEMPT ORGANIZATION RETURN (FORM 990) for the tax year ending December 31, 2008. (See Exhibit KK).

THE REVOCATION OF EXEMPT STATUS WAS IN ERROR AS A MATTER OF LAW

The revocation of exempt status and the "Notice of Deficiency" was invalid, null and void for it was based in its entirety on an incorrect interpretation of the statutes, regulations and case law governing any revocation of Petitioner's 501(c)(3) tax exempt status, including 26 U.S.C.A. Sections 501(a) and 501(c)(3), and C.F.R. 1.501(c)(3)-1(a)(1), 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(d)(1)(ii), and 1.501(c)(3)-1(d)(3). See for guidance, *Better Business Bureau v. United States*, 326 U.S. 279, 283, 66 S. Ct. 112, 114, 90 L. Ed. 67 (1945); *Hutchinson Baseball Enter., Inc. v. Commissioner*, 696 F.2d 757, 762 (10th Cir.1982). and *Church of Scientology v. Commissioner*, 823 F.2d 1310, 1315 (9th Cir.1987), cert. denied, 486 U.S. 1015, 108 S. Ct. 1752, 100 L.Ed.2d 214 (1988).

Respondent revoked Petitioner's exempt status **retroactive** to 2003 in violation of said statutes, regulations and case law governing the revocation of a corporation's tax exempt status.

Respondent's AO refused to give Petitioner a hearing on the issue, either in-person or by phone, falsely claiming the issue was included in IRS Notice 2008-14 as a "specified frivolous position" or reflected a desire to delay or impede federal tax administration. He demanded Petitioner withdraw the issue.

In revoking WTPF's exempt status, Respondent refers to certain material distributed by WTPF (a Blue Folder with its WTP Forms 1-10), which was Respondent's target in the 2007 case referred to under "Res Judicata" above , *U.S. v. Schulz, WTPF and WTPC*, Northern District of New York, Case No. 07-cv-3529, incorrectly claiming that that insubstantial, patently minor, *de minimus* activity of WTPF's constituted Petitioner's **primary** business activity.

The facts show there was a tremendous amount of exempt activity taking place in 2003 and beyond. See for instance Schulz Affidavit, pages 17-29. Petitioner cannot be penalized or called frivolous for raising "constitutional" issues when the very nature and approved purpose of its organization is based entirely on holding government accountable by claiming and exercising the Right to Petition, guaranteed in writing in every state constitution and in the First Amendment of the Bill of Rights.

To the extent the challenged material WTPF and WTPC distributed in 2003, was properly adjudged a non-exempt activity in the 2007 case (there was no strict scrutiny of the historical context and purpose of the Petition Clause of the First Amendment, no strict scrutiny of the content of the material under the Speech clause of the First Amendment, no full adversarial proceeding on the material facts in genuine dispute), the fact is that by any criteria, that single, "non-exempt" activity amounted to an insignificant, **insubstantial, *de minimus*** part of WTPF's and WTPC's overall activity in 2003.

In economic terms, in 2003, WTPF received just $2,060 for mailing 103 copies at $20 per copy (to partially recover the cost of duplicating, preparing and mailing the [Petition] material to people who would not or could not otherwise download copies for free from the website).

Contrast this *de minimus* activity with WTPF's total gross revenue for 2003 of **$360,609**.[4] Therefore, the amount of revenue received for the ***single***, allegedly "non-exempt" purpose - alleged improper by IRS, was a paltry **6/10ths of one percent** of the gross revenue received by WTPF in 2003. It cost more than $20 to prepare and mail each of those copies. The cost included the cost of the Blue Folder and its packaging and label, the cost of copying about 100 pages of text (comprising of numerous individually collated and stapled documents), and the cost of Priority Mail postage for the package, to say nothing of the opportunity cost involved in having scarce administrative volunteer labor stand at a copy machine in the office of WTPF to prepare the [Petition] package and then take it to the Post Office. The research, typesetting and graphic work that went into the "Withholding" Petition for Redress was all provided to WTPF for free by a Certified Paralegal firm.

Section 501(c) (3) of the Internal Revenue Code provides tax exemption for:

> Corporations ... organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or **educational** activities ... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

To be exempt under this section, a corporation must be organized and operated exclusively for one or more exempt purposes. 26 C.F.R. Sec. 1.501(c) (3)-1. The treasury regulations set out two tests to determine whether an organization meets this criterion. Id. A

[4] The IRS incorrectly asserts WTPF's gross revenue for 2003 was $485,351. See Exhibit Q-3. If this were true, which is not the case, WTPF's revenue from the single non-exempt activity in 2003 would amount to just 4/10ths of 1%.

corporation must first satisfy the "organizational test." The organizational test is satisfied if the "articles of organization":

> (a) Limit the purposes of such organization to one or more exempt purposes; and
> (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes. 26 C.F.R. Sec. 1.501(c) (3)-1(b).

There is no dispute here that WTPF satisfies the organizational test.

Once the organizational test is satisfied, the organization must also show that it satisfies the "operational test." The operational test consists of four elements:

> First, the organization must engage **primarily** in activities which accomplish one or more of the exempt purposes specified in Sec. 501(c) (3). Second, the organization's net earnings may not inure to the benefit of private shareholders or individuals. Third, the organization must not expend a substantial part of its resources attempting to influence legislation or political campaigns. Courts have imposed a fourth element. Organizations seeking exemption from taxes must serve a valid purpose and confer a public benefit. *Church of Scientology v. Commissioner*, 823 F.2d 1310, 1315 (9th Cir.1987), cert. denied, 486 U.S. 1015, 108 S.Ct. 1752, 100 L.Ed.2d 214 (1988).

Only the first element (primary activity satisfies one or more of the exempt purposes specified in 501(c)(3)) is in contention in this instance. None of the net earnings of WTPF inure to the benefit of private shareholders or individuals, WTPF expends no part of its resources attempting to influence legislation or political campaigns and WTPF serves a valid purpose and confers a public benefit (constitutional education and governance).

Although the words ‘exclusively’ and ‘primarily’ have different meanings, courts interpret the word ‘exclusively’ to mean, ‘primarily.’

> An organization must be operated exclusively for an exempt purpose to qualify for exemption under Sec. 501(c) (3). "An organization will not be so regarded if more than an **insubstantial** part of its activities is not in furtherance of an exempt

> purpose." 26 C.F.R. Sec. 1.501(c) (3)-1(c) (1). "[T]he presence of a single [non-exempt] purpose, **if substantial in nature**, will destroy the exemption regardless of the number or importance of truly [exempt] purposes." *Better Business Bureau v. United States*, 326 U.S. 279, 283, 66 S.Ct. 112, 114, 90 L.Ed. 67 (1945); *Hutchinson Baseball Enter., Inc. v. Commissioner*, 696 F.2d 757, 762 (10th Cir.1982). (Plaintiffs' emphasis).

WTPF is organized and operated exclusively for educational purposes. See Schulz Affidavit, pages 17-29.

WTPF's primary activities fully meet the requirements of Treasury Regulations 1.501(c)(3)-1(a)(1), 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(d)(1)(ii), and 1.501(c)(3)-1(d)(3).

For instance, WTPF meets the requirements of 1.501(c) (3)-1(a) (1):

> (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the **organizational test** or the **operational test**, it is not exempt.

In addition, WTPF meets the requirements of 1.501(c) (3)-1(c) (1):

> (1) *Primary activities.* An organization will be regarded as *operated exclusively* for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

WTPF engages primarily in activities which accomplish the **educational** purpose of section 501(c) (3). See Schulz Affidavit, pages 17-29.

WTPF meets the requirements of 1.501(c) (3)-1(d) (1) (ii):

> (ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or

> his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

WTPF serves a public interest. It is clearly not operated for the benefit of any of the private interests listed or any other private interest. Respondent failed to discover any such improper private interest during its exhaustive review of Plaintiff's business records. See Schulz Affidavit, pages 17-29.

WTPF meets the requirements of 1.501(c) (3)-1(d) (3), which reads:

> (3) *Educational defined* — (i) *In general.* The term *educational,* as used in section 501(c) (3), relates to:
>
> (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
>
> (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

WTPF instructs the public on subjects useful to the individual and beneficial to the community. (See Schulz Affidavit, pages 17-29). Individuals and the community at large are benefited by an increased knowledge and awareness of the history, meaning, effect and significance of each provision of the Declaration of Independence and the Constitution for the United States of America - the greatest governing documents ever given to mankind - America's Charters of Freedom and, in turn, the protection, preservation and enhancement of the liberties and freedoms promised by the provisions and principles of those Founding Documents. Indeed, the health, peace and prosperity of the Republic and the maintenance of the Liberty of the People depend directly upon such education as provided by WTPF. See Schulz Affidavit, pages 17-29.

The following is meant to further demonstrate that WTPF and WTPC engage primarily in activities which accomplish their exempt purposes specified in 501(c)(3) and (4).

1. WTPF is organized and operated exclusively for Educational purposes. Even though it advocates a particular, constitutional position or viewpoint, WTPF always presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. See also Schulz Aff., page 17-29.

2. The record shows that since 1999, WTPF's and WTPC's **primary** activity has been one of involving tens of thousands of People in the educational process of comparing the activities of government officials with specific requirements of the Constitution, and where violations have been detected, preparing and serving First Amendment Petitions for Redress of those Grievances. See also Schulz Aff., page 17-29.

3. WTPF's unique approach to educating others about the meaning of specific provisions of the Constitution is to rely on the meaning the last ten words of the First Amendment had when those words were added to the Bill of Rights. "On every question of the construction of the Constitution, let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." *Thomas Jefferson, Letter to William Johnson, Supreme Court Justice (1823).*

4. No Court has ever declared the full meaning and intended effect of the last ten words of the Constitution, much less applied the historical evidence to an interpretation of the meaning. For the historical context, purpose and documentary evidence of the meaning of the last ten words of the First Amendment, see Schulz Aff., Exhibit V.

5. The clause, “and to Petition the Government for a Redress of Grievances” was meant to serve as a critical element in the overall balance of power between the free People and the limited Government. The Framers’ Intent was that the clause serve as the Accountability Clause for use by the individual and minority to peaceably procure relief, without disturbing the public tranquility, when the Government was seen to be ignoring the boundaries drawn around its power by any of the other clauses of the Constitution. Specifically, the Accountability Clause of the First Amendment means the People have the unalienable RIGHT to serve their elected officials with Petitions to Remedy/Redress alleged violations of the Constitution, those elected officials are OBLIGATED to respond, and if the elected officials then ignore the People by refusing to respond, the People have the Right of enforcement, for any Right that is not enforceable is not a Right, and with every Right there is a Remedy.

6. Putting the Accountability Clause into practical action, strictly for the purpose of educating People, WTPF compares the behavior of elected officials to the requirements of the Constitution, and where there is a perceived conflict, WTPF prepares “proper” Petitions for Redress of those Grievances. Each Petition includes a particular prohibition, restriction or mandate of the Constitution, a factual account of the violation and a Remedy. If the Petition is to be served on officials in the political branches, the remedy demanded is usually answers to specific “admit or deny” questions.

7. WTPF educates People by involving them in the Petition process, either directly as signers of the Petitions or as servers of the Petitions, or indirectly, by publicizing and distributing news and copies of the Petitions.

8. WTPF's educational process continues as the People wait for the Government's response to the Petitions for Redress. Silence or a non-responsive response is educational, for it means the Government admits it is violating that provision(s) of the Constitution. Silence is admission when: a) the Government official has heard and understood the Petition for Redress; 2) that he was at liberty to interpose a denial; 3) that the statement was in respect to some matter affecting his rights or which he was then interested, and calling, naturally, for an answer; 4) that the facts were within his knowledge; and 5) that the fact admitted or the inference to be drawn from his silence would be material to the issue.

9. WTPC is the civic action arm of the We The People organization. WTPC has thousands of members and supporters nationwide, with county and state coordinators. They are the volunteer eyes and ears of the organization, and the invaluable "worker bees," serving WTPF's Petitions for Redress of Grievances on their elected officials, paying attention to what elected and/or appointed public officials are saying and doing at every level of government, comparing that behavior with the requirements of their State and federal Constitutions, and when they see an impropriety or a conflict they confront the unconstitutional and illegal behavior themselves, intelligently, rationally, professionally, pro-actively and non-violently, or they bring the violation(s) to the attention of WTPF for further action.

10. All this has tremendous educational and social value and is of vital necessity to the Republic if the People are to maintain the Rule of Law and their Liberty. As People begin to relate the behavior of our elected officials to specific prohibitions, restrictions and mandates in our Constitution, they develop a greater knowledge and awareness of the Constitution, the way government is designed to work, how the design contrasts to the way it is working and whether their elected officials are ignoring the Constitution and are refusing to be held accountable.

11. All of WTPF's and WTPC's activities are based on the beliefs that:

    - The Constitution is not a menu.
    - The Constitution cannot defend itself.
    - The Constitution will not be defended unless the People defend it.
    - Every violation of the Constitution adversely impacts our economy and the Liberty of the People.

12. WTPF and WTPC exist solely for the purpose of preserving, protecting and enhancing individual freedom by defending against violations of our federal and state Constitutions. They do this exclusively through civic education and civic action within the meaning of sections 501(c) (3) and 501(c) (4) of the Internal Revenue Code. Supporters of WTPF and WTPC further this First Amendment protected work via donations and memberships. To *administratively* deny the WTPF and WTPC tax status as provided via 501(c) (3) and 501(c)(4) is to effectively deny the protected First Amendment Rights of the organizations and their supporters.

13. WTPF's and WTPC's educational and civic action program has been broad and deep. Beginning in 1995 they and their predecessor organizations have been preparing and

managing the prosecution of multiple, educational Petitions for Redress of Grievances related to various actions of the federal Government including:

- **meddling in the internal affairs of other countries**, without any constitutional authority whatsoever; causing foreign nationals to direct their hostilities towards us, resulting in a growing Police State that is repugnant to the 4th Amendment and the General Welfare of a Free People;
- **engaging in undeclared wars** in violation of the war powers clauses of Articles I and II;
- gifting and lending public money and credit to private corporations for decidedly private purposes (**corporate welfare**), without any constitutional authority, whatsoever;
- **circulating fiat currency**, a violation of the money clauses of art. I;
- emitting Trillions of dollars worth of **Bills of Credit through or under the auspices of the Federal Reserve System** in violation of Article I;
- incurring Trillions of dollars worth of unlawful **debt to pay for programs and activities not enumerated** in Article I;
- **fraudulently declaring the ratification of the 16th Amendment** in violation of Article V, enforcing a **direct, un-apportioned tax on labor** in violation of Article I, and **refusing to consider the compelling evidence** in court, in violation of Article III;
- **failing to enforce immigration laws** in violation of Article II;

- **counting our votes in secret by machines**, in violation of our Right to *know* that our votes are being accurately counted;
- **failing to establish well-regulated state militias**, and by passing **federal gun control laws**, in violation of the Second Amendment;
- **dissipating, destroying and undermining America's sovereignty** in violation of the Declaration of Independence;
- **taking private land for private use** in violation of the Fifth Amendment;
- **failing to determine the constitutional eligibility of candidates for President,** in violation of Article II;
- **Failing to respond to Petitions for Redress,** in violation of the spirit and patent intent of the First Amendment as irrefutably established by a significant body of academic and historical research.
- **Failure of the Judiciary to directly declare the legal and constitutional meaning of the First Amendment Petition clause**

14. The preparation and service of these First Amendment Petitions for Redress has been punctuated from 1999 through 2009 with:

- Two, 3.5 hour, free educational conferences on the many subjects of the Petitions for Redress, sponsored and conducted by WTPF and WTPC, that were televised live by C-SPAN and rebroadcast numerous times (with **NO commercial message or content, sales pitch or anything for sale or sold**);
- Dozens of free public educational conferences on the many subjects of the Petitions for Redress, held at the National Press Club in Washington, DC, the

Hilton and Marriott hotels in the Washington DC area, sponsored and conducted by WTPF and WTPC, many of which were web cast live (With **NO commercial message or content, sales pitch or anything for sale or sold**);

- Hundreds of free educational conferences on the many subjects of the Petitions for Redress, sponsored and conducted by WTPF and WTPC at Universities, Churches, Libraries, and community meeting rooms throughout the Union, many of which were web cast live (With **NO commercial message or content, sales pitch or anything for sale or sold**);
- dozens of full-page educational messages on the many subjects of the Petitions for Redress, published by WTPF and WTPC in USA TODAY, the New York Times, the Washington Times and various regional newspapers (no sales pitches and nothing for sale or sold);
- hundreds of radio interviews on the many subjects of the Petitions for Redress (With **NO commercial message or content, sales pitch or anything for sale or sold**)
- a WTP meeting in the White House with, President Clinton's Economic Advisor to serve a Petition for Redress (With **NO commercial message or content, sales pitch or anything for sale or sold**)
- a WTP meeting in the Capitol with Speaker Hastert's Policy Advisor to serve a Petition for Redress (With **NO commercial message or content, sales pitch or anything for sale or sold**);

- a WTP conference in the Capitol with the Senate Majority Leader Lott's Policy Advisor to serve a Petition for Redress (With **NO commercial message or content, sales pitch or anything for sale or sold**);
- a press conference on the House Triangle on the subjects of the Petitions for Redress, jointly sponsored by members of the House of Representatives and WTPF (with **NO commercial message or content, sales pitch or anything for sale or sold**);
- an educational conference in a House Office Building on the many subjects of the Petitions for Redress, sponsored by WTP and members of the House of Representatives (With **NO commercial message or content, sales pitch or anything for sale or sold**);
- multiple marches and demonstrations on the National Mall, in front of the White House, and in front of the Treasury and Justice Departments, with permits in hand, to serve Petitions for Redress and/or to protest the many violations of the Constitution and the refusal of the Government to respond to our repeated Petitions for Redress, some web cast live, all sponsored and conducted by WTPF and WTPC (With **NO commercial message or content, sales pitch or anything for sale or sold**) and
- major educational conferences in 2009 at Jekyll Island, Georgia (two days) and in St. Charles, Illinois (eleven days, web cast live) on all the subjects of all the Petitions for Redress, sponsored by WTPF and WTPC (With **NO commercial message or content, sales pitch or anything for sale or sold**).

ARBITRARY REVENUE AND EXPENSES

Notwithstanding the fact the Respondent had conducted an exhaustive audit of Petitioner's WTPF Form 990 return for 2003, finding no discrepancies, Respondent arbitrarily and capriciously ignored Petitioner's 2003 Tax Form 990 in preparing the "Notice of Deficiency." Respondent sharply inflated Petitioner's gross revenue, and did not include any expenses, ignoring each and every one of Petitioner's expenses that were included in Petitioner's Form 990.

The WTPF "Notice of Deficiency" received from Appeals with its July 8, 2010 letter does not "**contain sufficient information from which to compute the taxpayer's tax liability**." There was no Form 4549-E attached.

The WTPF "Notice of Deficiency" dated 12/29/08, sent to WTPF from the Appeals unit on July 8, 2010, merely stated the Tax Deficiency was $165,019.00, with absolutely no information from which to compute the liability. There was no Form 4549-E attached.

Neither did the undated and unsigned "Notice of Deficiency" sent to WTPF on 2/12/10 by Revenue Officer Tave include a Form 4549-E or otherwise "**contain sufficient information from which to compute the taxpayer's tax liability**." While there was **no** Form 4549-E, there was a Form 886-A included.

In the case of WTPF, the Form 886-A merely asserted "Gross Receipts" of $485,351., taxed at 34%, resulting in a "Tax Due" of $165,019. See Exhibit Q-3 attached to my letter dated July 5, 2010.

The AO refused to give Petitioner a hearing on the issue, either in-person or by phone, falsely claiming the issue was included in IRS Notice 2008-14 as a "specified frivolous

position" or reflected a desire to delay or impede federal tax administration. He demanded Petitioner withdraw the issue.

ZERO TAX LIABILITY

On July 28, 2010 Petitioner informed Respondent's AO (Schulz Aff., Attachment Two):

> "I understand the Service now wishes to receive Form 1120 tax returns for WTPF and WTPC for 2004-2009 before the Appeals conference, in order to put the Service in a better position to discuss 'collection alternatives' for the taxes the Service assessed on both WTPF and WTPC for 2003.
>
> "With respect, while they have been prepared by our accountant, I prefer not to provide Appeals with any Form 1120 tax returns until the outstanding legitimate legal issues have been resolved by Appeals. It seems premature to discuss collection alternatives when there remains a possibility of a "no action" collection alternative. If I were to provide copies to Appeals they would be provided for your eyes and for information purposes only, with the understanding that I firmly believe the statute of limitations had run, any alleged "Notices of Deficiency" are invalid *ab initio*, that the revocation of the exempt status of each organization was not illegally justified, that both organizations remain not for profit organizations, that WTPF remains a 501c3 organization and WTPC remains a 501c4 organization and that neither WTPC nor WTPC are required to file Form 1120 tax returns." (See Attachment Two)

Exhibit GG-2 is a copy of unsigned Form 1120 tax returns for WTPF for the years 2004 through 2009, reflecting a zero tax liability.

RETALIATION

On March 30, 2007, with permits from the National Park Service and the District of Columbia Police Department, WTPF and WTPC led the third in a series of high profile civic education and civic actions in front of the White House objecting to the fact that the Government

was refusing to respond to any of the Petitions for Redress, including the Petitions related to the issues of **war** powers and the Iraq Resolution, **money** and the Federal Reserve System, **privacy** and the Patriot Act, and **taxes** and the direct un-apportioned tax on labor and taxes and "wage withholding."

The next day, March 31, 2007, the *Washington Post* ran a photo of the demonstration of civic education and civic action and an accompanying article titled, "Agitating for the First Amendment." See Exhibit I.

Within days of the appearance of the photo and article in the Washington Post, the IRS filed a civil case against WTPF and WTPC, charging that by distributing the "Withholding" Petition for Redress in 2003 (the Blue Folder with its WTP Forms 1-10), WTPF and WTPC were "promoting an abusive tax shelter" a violation of 26 USCS 6700.[5]

The complaint was served early in May of 2007. Exhibit CC

On May 17, 2007, Respondent pressured WTPF and WTPC to agree to an extension in time to complete the examination from August 15, 2007 to December 31, 2008, believing that by then Respondent's case against WTPF and WTPC would have been adjudicated in its favor. See accompanying Affidavits by Judith Dievendorf, also at Exhibits GG-1 and GG-2.

On information and belief, the only reason the IRS wanted to extend the examination period to December 31, 2008 was to play out a (unconstitutional) retaliatory strategy to effectively silence a constitutionally valid, First Amendment, tax exempt activity that was obviously viewed by the elected officials as an extraordinarily uncomfortable campaign by

[5] And, as such, a **non-exempt activity** of both WTPF, a 501(c)(3) tax-exempt entity, and WTPC, a 501(c)(4) tax-exempt entity.

WTPF and WTPC, a campaign aimed at forcing the Government to answer difficult questions regarding its behavior vis-à-vis war, money, privacy, and taxes.

On information and belief, Respondent's strategy to silence WTPF's and WTPC's constitutionally protected efforts to hold the Government accountable by means of **tax exempt** activities, included:

- the manufacture and filing in April 2007 of a false and misleading civil action under IRC Section 6700 (promoting an abusive tax shelter), and
- deliberately failing to state a claim for monetary damages against WTPF and WTPC in the 6700 complaint so that a trial by jury could be avoided by implication of the 7th Amendment,
- immediately moving for summary judgment based on false and misleading information, to avoid a full adversarial proceeding and public trial, notwithstanding numerous material facts that were in genuine dispute, and
- "preventing" the Courts, from considering WTPF and WTPC's contemporaneous historical evidence and argument regarding the meaning of the Right to Petition Government for Redress of Grievances, and
- "preventing" the Court from applying the strict scrutiny test to determine the constitutionality of the "Withholding" Petition for Redress under the Petition clause of the First Amendment, and
- "preventing" the Court from applying the strict scrutiny test to determine the constitutionality of the "Withholding" Petition for Redress under the Speech clause of the First Amendment, and

- Obtaining a ruling, without any adversarial hearing or trial, against WTPF and WTPC on the core merits of the "6700" charge, and
- Using the decision in the "6700" case as justification for *administrative* revocation of WTPF and WTPC's exempt status, retroactive to 2003, and
- *Administratively* "converting" WTPF's 2003 Form 990 tax return (with its $360,609 in gross revenue)[6] and WTPC's 2003 Form 990 tax return to a Form 1120 tax return, and
- *Administratively* assessing a 34% tax on their gross revenue, and
- *Administratively* placing a lien on all property owned by WTPF and WTPC, and
- *Administratively* issuing a Levy against all contributions to WTPC and WTPC, and
- *Administratively* demanding WTPF and WTPC file 1120's for all years subsequent to 2003, so that IRS can assess further retaliatory taxes on their net revenues for each year.

CONCLUSION

Petitioner respectfully requests a final order:

a) Declaring Petitioner We The People Foundation for Constitutional Education, Inc., was organized and operated for charitable purposes within the meaning of **26 U.S.C.S. § 501(c)(3)** and as a charitable educational foundation had no deficiencies in income tax

[6] WTPF was raising money for its national "State of the Constitution" conference in January 2004 and was also raising money to pay an attorney to bring its landmark Right to Petition lawsuit in 2004. WTPF's gross revenue in 2003 was $360,609, not $485,351 as alleged by IRS in its undated and unsigned Notice of Deficiency. WTPC's gross revenue in 2003 was under $25,000, not $44,343 as alleged by IRS in its undated and unsigned Notice of Deficiency.

for 2003 based on its entitlement to charitable exemption under **26 U.S.C.S. § 501(c)(3)**, and

b) Declaring the exempt status of the We The People Foundation for Constitutional Education, Inc., is intact, and

c) For such other and further relief as to the Court seems just and proper.

Dated: September 29, 2011

Respectfully submitted.

_____

Robert L. Schulz, pro se
2458 Ridge Road,
Queensbury, NY 12804