

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and	:	
MATTHEW LOPES REVENUE	:	
OFFICER, INTERNAL REVENUE	:	CIVIL ACTION No. 11-6591
SERVICE	:	CIVIL ACTION No. 11-6592
	:	
v.	:	
	:	
MICHAEL J. AMABILE	:	
	:	

ORDER

AND NOW, this 20th day of December, 2011, it is ORDERED that, as set forth in the accompanying Memorandum, defendant Michael J. Amabile shall, on or before Monday, January 9, 2012, compile all documents responsive to the IRS summons, create a log describing each document that he believes to be protected by the Fifth Amendment and to produce to IRS officer Matthew Lopes all documents that Mr. Amabile views as non privileged.

It is FURTHER ORDERED that Mr. Amabile shall supply the Court with the privilege log for in camera review along with the documents identified as privileged in the log so that the Court may make a determination as to whether he must provide to the Government any or all of the documents in question.

It is FURTHER ORDERED that defendant's motion to dismiss the government's petition to enforce the IRS summonses and to vacate the show cause orders and his motion requesting judicial notice of facts are DENIED.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.

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:
v. :
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MICHAEL J. AMABILE :
:

O'NEILL, J.

December 20, 2011

MEMORANDUM

I have considered the arguments set forth by Mr. Amabile in his motion to dismiss and other filings. As the Government points out in its response to defendant's motion to dismiss and related filings, Mr. Amabile's arguments that: (1) he is not "a person liable for tax," (2) he is not a citizen of the United States for purposes of the tax laws and/or that he lives on non federal land, and (3) that any income he makes is not subject to tax and/or that the income tax is unconstitutional are frivolous, without merit, and have been uniformly rejected by the Courts.

With respect to Mr. Amabile's contention that he is excused from complying with the summons based on his Fifth Amendment privilege against self-incrimination, I agree with the Government that a generalized or blanket Fifth Amendment assertion is insufficient to defeat the IRS summons. To properly claim the privilege, Mr. Amabile must make specific assertions of privilege on a document by document or question by question basis. Mr. Amabile must make a showing that the disclosures will confront him with "real and appreciable" – and not "imaginary and unsubstantial" – hazards of self-incrimination. Marchetti v. United States, 390 U.S. 39, 48 (1968).

I agree with the approach followed by my colleague Judge Bartle in the matter of United States v. Carlin, No. 06-1906, 2006 WL 2619800 (E.D. Pa. Sept. 11 2006). I will require Mr. Amabile to compile all documents responsive to the IRS summons, to create a log describing each document that he believes to be protected by the Fifth Amendment and to produce to IRS officer Matthew Lopes all documents that Mr. Amabile views as non privileged. I will also require Mr. Amabile to supply the Court with the privilege log for in camera review along with the documents identified as privileged in the log so that the Court may make a determination as to whether he must provide to the Government any or all of the documents in question.

Mr. Amabile, you must produce the requested information to the Government and to the Court on or before Monday January 9, 2012. If you fail to do so, you may be held in civil contempt.