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Municipal Court of Los Angeles County

BOARD OF EQUALIZATION AKA THE) CASE NO. _____
OF THE STATE OF CALIFORNIA) Citation No, _____

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Plaintiff's)
vs.) NOTICE OF MOTION AND MOTION
Richard J. McDonald, Citizen) TRANSFER ACTION TO SUPERIOR
Respondent) COURT [C.C.P. 396]; POINTS
) AND AUTHORITIES;
) DECLARATION OF Richard J.
)
) DATE: _____
TIME: _____

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CTRM: _____

NOTICE IS HEREBY GIVEN, that on ___day of _____, 1994, at 1330 hours, or as soon thereafter as the matter can be heard, in Courtroom __, of the above entitled court, located at 14400 Irwin St. Mall, Van Nuys, Richard J. McDonald will move the court to transfer this special proceedings to the Superior Court of Los Angeles County.

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This motion will be made on the grounds that the court in which this special proceeding is now pending lacks jurisdiction of the subject matter and will be based upon this notice of motion, on the declaration of Citizen Richard J. McDonald, Sui Juris attached hereto, on the provisions of Section 396, of the Code of Civil Procedure, on the memorandum of points and authorities served and filed herewith, on all papers and pleadings on file, and on such oral and

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documentary evidence as may be presented at the hearing of the motion.

Dated ____ 1993

Richard J. McDonald, Sui Juris
California Citizen
In Pro-Per

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POINTS AND AUTHORITIES

This is a case of first impression, and as such the Court should read very carefully the issues that are brought forth in this case as regarding states Rights and state Citizenship, as the Accused is involved in a Political Movement to restore these back to the People.

Citizen McDonald objects to the imposition of the two (2) taxes imposed by "State of

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California" indicated on the alleged citation.

I

THE MUNICIPAL COURT LACKS JURISDICTION IN ANY
MATTER INVOLVING THE LEGALITY OF ANY TAX.

The Constitution Article VI, Section 5, has conferred upon the Superior Court original and

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exclusive jurisdiction in any matter that "involve the legality of any tax, impost, assessment, toll, or municipal fine," California Employment Stabilization Commission v. Municipal Court, (1944) 62 Cal.App2s. 781, 783, 145 P.2d. 361; Arroyo D & W. Co. v. Superior Court, (1891) 92 Cal 47, 27 Am.St. Rep. 91, 28 Pac. 54; Bottle Mining and Milling Co. v. Kern, (1908) 154 Cal. 96, 97 Pac. 25. The Superior Court has original jurisdiction in matter involving the legality of a tax.

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City of Santa Barbara v. Eldred, (1892) 95 Cal. 378, 30 Pac. 562. It is not within the power of the legislature to divest the Superior Court of that jurisdiction conferred upon it by the Constitution.

Bacon v. Bacon, (1915) 150 Cal. 477, 89 Pac. 817.

Thus, the Municipal Court is without either statutory or constitutional authority to hear or rule in this matter. The municipal court cannot by holding that it has jurisdiction when it has not,

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invest itself with jurisdiction that has not been conferred on it. Ex parte Kearny, 55 C. 212; Levy v. Superior Court of Yolo County, 66 C. 292, 5 P. 353; Arroyo D & W. Co. v. Superior Court, (1891) 92 Cal 47, 27 Am.St. Rep. 91, 28 Pac. 54; Rogers v. Cady, 104 C. 288, 38 P. 81; 16 Cal. Jur. 393-95, § 66, fn. 39.

This is an issue wherein the Accused objects to the erroneous imposition of the excise tax

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or "Use Tax" imposed by the California Revenue and Taxation Code and challenges the validity of the tax imposed upon a "Citizen of California" who lives in California, and not in any "federal area" or "in the State", or "in this State" as those terms are defined in the "Buck Act", 4 U.S.C. §§ 105-110 which states in pertinent part:

4 U.S.C.S. § 110(d). "The term "State" includes any Territory or possession of the

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United States."

4 U.S.C.S. § 110(e). "The term Federal area means any lands or premises held or acquired by or for the use of the United States **or any department, establishment, or agency** of the United States; any federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal

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area located within such State."

Revenue & Taxation Code § 6017:

"In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned or ceded to the United States of America."

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There is no reasonable doubt that the federal "State" is imposing directly a "use" tax (excise) in this case against Citizen Richard J. McDonald, under the provisions of 4 U.S.C.S. Section 105 which states in pertinent part:

§105. State and so forth, taxation affecting Federal areas; sales and use tax

(a) No person shall be relieved from liability for payment of, collection of, or

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accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, on the ground that the sale or use, with respect to which tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area, within such State to the same

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extent and with the same effect as though such area was not a Federal area."

Revenue and Taxation Code § 6017 which is identical in implication and meaning. This tax is imposed on every motor vehicle used in any "federal area" such as the Central District of California, Social Security Area, federal ZIP Code area, etc..

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"Irrespective of what tax is called by state law, if its purpose is to produce revenue, it is income tax or receipts tax Under Buck Act [4 U.S.C.S. §§ 105-110]."

Humble Oil & Refining Co. v. Calvert, (1971) 464 SW2d. 170, affd (Tex) 478 SW2d. 926, cert. den. 409 U.S. 967, 34 L.Ed2d. 234, 93 S.Ct. 293.

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NO PRESUMPTIONS CAN BE MADE IN ANY CASE WHERE
THERE IS A POSSIBILITY OF LOSS OF LIFE, LIBERTY,
PROPERTY OR FREEDOM.

The California Supreme Court in People v. Roder, (1983) in bank, 33 Cal.3d. 491, 189
Cal.Rptr. 501, held that mandatory presumptions in criminal matters are unconstitutional. Thus,

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the court cannot take judicial notice of any presumptions that the Accused is a U.S. citizen, or that the Accused has a "contract implied in fact", or lives in any "Federal area" that would place him within the territorial jurisdiction of the "Buck Act" 4 U.S.C.S. §§ 105-113, or the "Public Salary Tax Act of 1939" § 111, supra.

There can be no absolute and mandatory presumptions in any court matter, especially

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where there is a possibility of loss of life, property or freedom: County Court of Ulster
County NY v. Allen 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed2d. 777.

Therefore, the Accused must fit squarely within the statutes. The court cannot presume that the Accused is within the territorial jurisdiction just because the PROSECUTION makes the allegation, there must be **absolute proof** that supersedes the Affidavits and public record of

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which this court must take judicial notice. This public record has not been controverted by any affidavit sworn to under penalty of perjury. Social Security is a "Contract implied in fact", and "A contract may be rescinded by the act of a party entitled and desiring to rescind." McNeese v. McNeese, (1923) 190 Cal. 402, 213 P. 36. A contract obtained under any element of fraud such as nondisclosure, misrepresentation, withholding of pertinent facts can be rescinded by serving a

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notice of rescission. Prewitt v. Sunnymead Orchard Corp., 189 Cal. 723.

A Citizen has the right to be free from unauthorized actions of government officials which substantially impair their property rights, Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400; and Citizenship and freedom are property Rights.

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REMOVAL IS MANDATORY BY THE MUNICIPAL COURT

Section 396 of the Code of Civil Procedure, which states that where a complaint is filed that necessarily involves the determination of questions not within the court's jurisdiction, the court must transfer the matter to a court having jurisdiction of the subject matter, makes such transfer mandatory and the court must suspend all further proceeding. Eveleth v. American Bras

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& Iron Foundry, (1962) 203 Cal.App.2d. 41, 44-45 21 Cal.Rptr. 95.

Thus for the foregoing reasons, this court should transfer this matter the the Superior Court as it is a Court of competent jurisdiction.

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Municipal Court of Los Angeles County

BOARD OF EQUALIZATION AKA THE) CASE NO. _____
OF THE STATE OF CALIFORNIA) Citation No, _____

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TIME: _____
CTRM: _____

I, Richard J. McDonald, Citizen, declare:

I am the Accused and make this declaration in support of the Motion to Transfer the above entitled special proceeding to the Superior Court of California for Los Angeles county on the grounds that the Municipal Court lacks jurisdiction over the subject matter.

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The citation is for failure to obtain a "drivers license" by not paying the license tax, and failure to obtain a registration on my personal property by paying the registration tax. These taxes are not applicable to Citizen McDonald, and therefore the legality of the tax is the main issue. Therefore, the Municipal Court has no jurisdiction to hear or to try this special proceeding under the authority of C.C.P. Section 86 (a)(1) and the Constitution for California (1849) Article

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VI. Therefore, this special proceeding should be transferred to the Superior Court in accordance with C.C.P. Section 396.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed on _____, 1994

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Richard J. McDonald, Citizen

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Municipal Court of Los Angeles County

BOARD OF EQUALIZATION AKA THE)
OF THE STATE OF CALIFORNIA) Citation No, _____

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Plaintiff's)

vs.) ORDER

Richard J. McDonald, Citizen)

Respondent)

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The motion of Richard J. McDonald came on regularly for hearing by this court on _____, 1994. Defendant McDonald appeared in Propria Persona. Plaintiff appeared by counsel _____.

It appearing to the satisfaction of the court from the pleadings that the determination of the above entitled special proceedings will necessarily involve the determination of questions not

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within the jurisdiction of this court.

NOW, THEREFORE, IT IS ORDERED that all further proceedings in this matter be, and the same are hereby, suspended, and that the matter be transferred to the Superior Court of California for Los Angeles county, a court having jurisdiction of the subject matter of this special proceeding.

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IT IS FURTHER ORDERED that the clerk of this court transmit to the clerk of the court to which this matter is ordered to be transferred the pleadings and papers thereof.

Dated: _____ 1994

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Judge of the Municipal Court