

4. Plaintiff is “seeking enforcement of its federal tax liens....” Plaintiff alleges no “federal tax liens”. Plaintiff alleges only that it “recorded a Notice of Federal Tax Lien ... in the property records of Bexar County, Texas....” Recording a “Notice” does not a lien make. Absent the alleged liens, no court can claim jurisdiction over a subject matter that does not exist. [Moreover, violation of the Property Code of Texas in the act of recording the “Notice” as an uncertified alleged “Lien” vitiates the act and can generate penalties.]
5. This cause is an action “in rem” in the nature of a claim against the paper titled “Notice of Federal Tax Lien”, hereafter “alleged lien” recorded in the Property Records of the Bexar County Clerk by the entity defined thereon as “VIC DIETZ”, who by filing such in the County records, made a claim of interest in property in Bexar County within the purview of the state district court. State Courts have exclusive jurisdiction in an “in rem” motion with the res residing in the County. The place for recording and the validity of the documents is a matter totally controlled by state law as there is no federal law that provides a remedy in this state.
6. “Alleged lien” is in the possession of the Clerk of Bexar County Recorder and was filed under the Property Code Chapter 14: 14.001 through 14.007, Uniform Federal Lien Registration Act, indicating it being filed under state jurisdiction. The state court has exclusive jurisdiction of “alleged lien” in this action as previously ascertained by law in the Texas Statutes. The intent of the State legislature was crystal clear in their passage of the Statutes concerning the filing of Federal tax Liens and/or Levies in the State of Texas. The legislature had to know that the State had subject matter jurisdiction in this matter, or why would they have bothered to pass such legislation. The Texas Courts are bound by the State Constitution to uphold that legislative intent.
7. Henry Dale Goltz and Evangelina Goltz relies upon the foregoing “exclusive original jurisdiction” as being the controlling law in relation to the courts, whether local, state, or federal, and neither “VIC DIETZ” (nor its agents it represented) has given evidence that the state of Texas has ceded the “exclusive original jurisdiction”.
8. “Alleged lien” remains in the Bexar County Recorder records and has not been removed therefrom by any lawful means to a records department in the federal courts.
9. State court territorial jurisdiction is determined by the Due Process Clause of the 14th Article of Amendment to the Constitution for the United States of America..
10. Federal courts have limited jurisdiction in that they can only hear cases that fall both within the scope defined by the Constitution in Article III Section 2 and Congressional statutes. Specifically stated in Clause 1:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; --”to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction; --to Controversies to which the united States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another state;--between Citizens of different States,-- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects”.

11. The judicial power stated in the above Article III has no provision to allow a Federal Court to assume jurisdiction of an in rem motion with the res residing inside the state.
12. Pursuant to *Mitchell v. Maurer*, 293 U.S. 237 (1934), holding that, federal courts are of limited jurisdiction means that litigants in them must affirmatively establish that jurisdiction exists and may not confer nonexistent jurisdiction by consent or conduct, “has not affirmatively established that subject matter jurisdiction exists in this federal court and this court must remand this action back to the state court for this cause alone”.
13. If “alleged lien” filed into the Bexar County Recorder records is not based upon fraud, then entity “VIC DIETZ” has an opportunity to reveal the truth as to the facts, law and regulations upon which “alleged lien” is founded and substantiate the matter in the court of competent jurisdiction for a just resolution of the matter.
14. State court authority should not be superseded by federal courts without special authority and this section is to be strictly construed against removal. *Garza v. Midland Nat. Ins. Co.*, D.C. Fla. 1966, 256 F.Supp.12.
15. “In order to overcome the interdiction of federal interference in state judicial proceedings, two express preconditions must be shown before relief may be granted to a federal plaintiff; the moving party must demonstrate that he will suffer irreparable injury if the federal court stays its hand, and, second he must demonstrate that he does not have an adequate remedy at law in the state courts. “A party may not invoke the aid of a federal court, alleging that his state remedies are inadequate, without having first tested the sufficiency of those remedies and having found them to be wanting.” *Elizabeth Ann Duke et al. v. The STATE OF TEXAS et al.*, 477 F.2d 244 (1973)
16. Further concerning Jurisdiction In Rem: In *Arndt v. Griggs*, 134 U.S. 316, at p. 320, 10 Sup Ct. 557, the court was very clear who held exclusive jurisdiction in rem as it concerns property rights. There is a well recognized class of cases in which a court may render decisions in accordance with due process of law without having jurisdiction of the

person whose rights are to be affected. The court exercises the sovereign power of the state which; “has control over property within its limits; and the condition of ownership of real estate therein...” They go on to say; “The well-being of every community requires that the title of real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled question respecting it.” They were very explicit in relationship to which court holds exclusive jurisdiction in these matters; “The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the state, and as this duty is one of the state, the manner of discharging it must be determined by the state...” (Emphasis added)

17. Further, concerning judicial decision on hearing motion: There are essential elements to any case or controversy, whether administrative or judicial, and/or arising under the constitution and laws of the United States Article III § 2, U.S. Constitution. (See *Federal Maritime Commission v. South Carolina Ports Authority* 535 U.S. (2002) Decided March 28, 2002.) The following elements are essential:

8.1 When challenged, Standing, Venue and all elements of Subject Matter Jurisdiction, including compliance with substantive and procedural due process requirements, must be established in the record;

8.2 Facts of the case must be established in record;

8.3 Unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination);

8.4 The law of the case must affirmatively appear in the record, which, in the case of a tax controversy, includes taxing statutes with attending regulations;

8.5 The advocate of a position must prove application of law to stipulated or otherwise provable facts;

8.6 The trial court, whether administrative or judicial, must render a written decision that includes findings of fact and conclusions of law. (Emphasis Added)

18. MAXIMS OF LAW with regard to Jurisdiction:

- A judicial act by a judge without jurisdiction is void (*Lofft*. 458).
- Statutes are confined to their own territory, and have no extraterritorial effect (*Woodworth v. Spring*, 4 Allen (Mass.) 324).
- Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice (10 *Coke*, 73a).

- Jurisdiction is the power to declare the law; and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause (*Bullington v. Angel*, 220 N.C. 18)
- The order of things is confounded if every one preserves not his jurisdiction (4 *Inst. Proem*).

Notice of Non-acceptance of Removal

The Petitioner hereby gives notice of non-acceptance of the alleged removal action for the following causes:

1. Henry Dale Goltz and Evangelina Goltz do not give consent for this action to be removed from the “exclusive original jurisdiction” in the state circuit court to the federal legislative court that is without injunctive powers for such removal or for the remedy hereto.
2. This case is an action “in rem” and operates on paper that is in the possession of the Clerk of Court in Bexar County of the state of Texas.
3. The said paper involves the “right of possession of real property” within the County over which the state circuit court has “exclusive original jurisdiction”.
4. The adjudication of this case specifically requires an order from a state court which is beyond the jurisdiction and power of the federal court to provide.

Dismissal of Removal Action

Pursuant to the foregoing causes for non”acceptance and additional causes set forth in this Affidavit, this action must be dismissed with prejudice. **We declare under penalty of perjury that state court holds exclusive jurisdiction and is the only court that has jurisdiction to be able to rule in relief.**

Sufficient cause exists for this action to be dismissed with prejudice for lack of subject matter jurisdiction in the federal court. This federal court is without subject matter jurisdiction of the “res” and/or the issues of this action and we hereby petitions for this action to be dismissed with prejudice as a matter of law and subject matter jurisdiction.

Henry Dale Goltz and Evangelina Goltz move this honorable court to take JUDICIAL NOTICE of the foregoing, and FOR THE REASONS STATED, move this court to ABATE the Plaintiff’s action pending its presentation of verifiable proof of its and the court’s jurisdiction in this matter.

SPECIAL NOTICE to the court – We are in receipt of the court’s ORDER AND ADVISORY dated August 21, 2006. It appears to assume jurisdiction based on the allegation that it “has received Defendant(s) Answer...” Henry Dale Goltz and Evangelina Goltz have not yet submitted an ANSWER to the court. This is in accordance with the July 28th ORDER extending the date for an ANSWER to “no later than September 7, 2006.” (See Attachment) We do not concede jurisdiction to the court based on having received a copy of the August 21st ORDER.

On this Twenty-Fifth day of August anno Domini Two Thousand and Six -
All Rights Reserved Without Recourse.

Affirmed by: _____
Henry Dale Goltz
Aggrieved Party

Affirmed by: _____
Evangelina Goltz
Aggrieved Party

CERTIFICATE OF SERVICE

I am the Aggrieved Party in this matter; I am a Texian American, over the age of twenty-one years.

On August 25, 2006 I served a copy of attached Lodgment of Judicial Notice and Motion To Abate, by securely enclosing them in an envelope with pre-paid first class postage, and addressed as follows:

Michelle C. Johns
Attorney, Tax Division
Dept of Justice
717 North Harwood, Suite 400
Dallas, TX 75201

I certify the foregoing to be true and correct and that I believe the service was made in accordance with the Federal Rules of Civil Procedure.

Henry Dale Goltz, pro per
US PO Box 690126
San Antonio, Texas [78269]