**Henry Dale Goltz**
**Evangelina Goltz**
**Aggrieved Parties**

# Lodgment
**Into the**
**UNITED STATES DISTRICT COURT**
**For the**
**WESTERN DISTRICT OF TEXAS**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA** | ) | |
| **Petitioner** | ) | |
| | ) | |
| **-against-** | ) | No. SA-06-CA-0503-XR |
| | ) | |
| **Henry Dale Goltz** | ) | |
| **Evangelina Goltz** | ) | |
| **Aggrieved Parties** | ) | |

## Judicial Notice
## Exception to Court Order Dated: 28 September 2006

The Aggrieved Parties, the Goltzes, have received and digested the seven-page ORDER issued by the Court on 28 September 2006. We now believe that the ORDER was unduly harsh, contained unwarranted biased remarks, and attributed to us quoted commentary from other unrelated cases. One is led to believe that the ORDER was manufactured by the Petitioner and issued without even having been read by the Court. We take EXCEPTION to the ORDER, and request a Court HEARING on its contents.

The Goltzes previously NOTICED the Court regarding our Amended Answer which was STRICKEN in this ORDER, because we "failed to request leave of the Court under Fed. R. Civ. P. 15(a) to file an amended pleading." We found it highly irregular to STRIKE a pleading with no prior notification to us, no apparent Motion to Strike submitted by the Petitioner, no opportunity to respond, and no Hearing on such Motion. We believed we were in compliance. Nevertheless, in our letter to the Court dated 30 September 2006, we capitulated on the assumption that perhaps our lack of knowledge of legal procedure led us to misread the rule, and we asked the Court for leave to allow the Amended Answer under the provision of the rule that "leave shall be freely given when justice so requires." The Court is considering our request.

Now, the Goltzes wish to address the remainder of the ORDER which we believe was unduly harsh, contained unwarranted biased remarks, and attributed to us quoted commentary from other, unrelated cases.

## I. Factual and Procedural Background

1. The ORDER states: "The Goltzes are proceeding *pro se*." This is NOT true. The Goltzes are not representing themselves, nor are they represented by counsel. They are making Special Appearances, *pro per,* for the purpose of challenging the personal and subject matter jurisdiction of the Court and the jurisdiction of the United States. The Goltzes will expect the United States to prove jurisdiction before we proceed.
2. The ORDER lists six "arguments" allegedly proffered in our Motion to Abate. The Government's response lists four "arguments" which bear little or no relationship to our six "arguments". In the interest of Justice, these incompatible arguments must be heard.
3. Even after "concluding" that our Amended Answer was improperly submitted and was STRICKEN, the ORDER makes unwarranted and biased remarks about the **content** of the STRICKEN Amended Answer. The ORDER states: "The Goltzes base their argument on a convoluted and confused analysis of United States Code, the United States Constitution, and IRS Regulations." The ORDER makes no reference to any particular point in the 15 pages of the Amended Answer; it just dismisses it in total as "convoluted and confused". It is hard to imagine that the Court would knowingly manufacture or approve of such a biased and prejudiced ORDER.

## II. Legal Analysis

4. Although this section of the ORDER is entitled "Legal Analysis", it begins by quoting, not law, but dicta and elementary idiom from foreign cases. For example: "advanced shopworn arguments characteristic of tax-protester rhetoric …", and "a hodgepodge of unsupported assertions, irrelevant platitudes and legalistic gibberish." Then, by preceding the first prejudicial comment with "The Court finds that the Goltzes have", and the adjective-loaded second with "the Court finds that Defendants' Amended Answer is", the ORDER attempts to shamelessly attribute commentary, allegedly written by some other Court in some other case, to this Court and to our pleadings. In reality, the colorful commentary has been plagiarized from other cases, and we are not even noticed with the facts of those cases. No where does the ORDER reference a single legal argument contained in our (STRICKEN) Amended Answer or advance a single sensible response. The excuse given is that "to do so might suggest that these arguments have some colorable merit." The non-response response (obviously written by the Petitioners) indicates that they are unable to provide a response based in law. In addition, it is

interesting to note that the excuse given is also plagiarized from another case without providing any of the arguments to which that excuse refers. It is the first paragraph of this ORDER that contains the "shopworn rhetoric" characteristic of a lack of a lawful basis for its allegations. It is an embarrassment perpetrated on the Court and a blow to justice.

5. The first paragraph of this ORDER ends with the patronizing: "The Court will briefly indulge the Defendants and explain why." We are quite sure that this is not the Court's handiwork. The "brief" indulgence continues on for three pages and it starts, not surprisingly, with a remedial course in civics – the Constitution created Congress, the Congress creates laws, the courts … etc., etc. In those three pages, never once was the concept of a valid legal assessment based on a return even broached, nor considered was the idea of companion implementing regulations providing the authority to enforce code sections. A Code section is impotent without its companion implementing regulation:

> At 26 U.S.C. 7805(a): "… the Secretary shall prescribe all needful rules and regulations for the enforcement of this title …."
>
> In *California Bankers Association v. Shultz* 416 U.S. 25 the US Supreme Court said at page 26: "The reporting act is not self executing; it can impose no duties until implementing regulations have been promulgated", at page 39: "… only those who violate these regulations may incur … penalties, it is the actual regulation issued by the Secretary … and not the broad authorizing language of the statute which is to be employed for enforcement", and at page 44: "… penalties attach only upon violation of regulations promulgated by the Secretary…."

The one time that a regulation was cited, it was a Part 301 regulation which, as any informed revenue agent should know, is applicable only to Alcohol, Tobacco Products and Firearms excise taxes. This ORDER cannot be a product of a United States District Judge who has sworn an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich, and … faithfully and impartially discharge and perform all the duties incumbent upon me … So Help Me God."

6. Finally, the ORDER refers to the prior case – *United States v. Goltz* – and states that it was dismissed without prejudice "to pursue alternative forms of relief" and that "this action … is the 'alternative form of relief'" referred to in the Dismissal Order. The clever formatting and wording of that statement makes it appear technically accurate, but it is a fraud on justice. It is true that the Order of Dismissal used the words: "to pursue alternative forms of relief", but what actually occurred in the Court, and what is recorded in the official transcript is NOT as stated here. The US Attorney said "that the IRS will do a 6020(b)". The judge said: "Their decision is to take it administratively and if that's their decision, that's their decision." This action is NOT an "administrative" action.

**III. Conclusion**

The Petitioner, it appears, wrote the ORDER dated 28 September 2006, and took broad and unwarranted liberties with the facts and law at issue. In consideration of the arguments stated above, the Goltzes MOVE this Court to rescind its ORDER of 28 September 2006 and conduct a Hearing on the Motions.

Affirmed by: _____
Henry Dale Goltz
Aggrieved Party

Affirmed by: _____
Evangelina Goltz
Aggrieved Party

## CERTIFICATE OF SERVICE

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

**On October 5, 2006, I served a copy of this Lodgment of Judicial Notice and Exception to Court Order Dated: 28 September 2006, by securely enclosing it 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]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

| | |
|---|---|
| **UNITED STATES OF AMERICA,** | |
| **Plaintiff,** | |
| **VS.** | **Civil Action No. SA-06-CA-503-XR** |
| **Henry Dale Goltz, and Evangelina Goltz,** | |
| **Aggrieved Parties** | |

# ORDER

On this date, having received an Exception to Court Order dated 28 September 2006, and a Motion from the Defendants to rescind said ORDER and conduct a Hearing on the prior Motions, and in consideration of justice and due process, the Court finds good cause to RESCIND said ORDER and permits Defendants a Hearing on the Motions. Docket Nos. 12, 14, and 19 are reinstated for a Hearing on the Merits. The Hearing is set for _____

It is so ORDERED.

SIGNED this _____ day of October, 2006

_____

XAVIER RODRIGUEZ

UNITED STATES DISTRICT JUDGE