

RECEIVED
FEB 20 1985
OUR FILE # _____



FILED

FEB 10 1985

LOU ALEKSICH, JR., CLERK

By Therese J. [Signature]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JEROME DAVID PEDERSON,)
)
Defendant.)

NO. CR-84-57-GF

MEMORANDUM AND ORDER

The defendant, Jerome Pederson, is charged with seven counts of willfully failing to file income tax returns for the years 1977 through 1983, in violation of 26 U.S.C. §7203. Presently before the court are Mr. Pederson's pretrial motions seeking (i) dismissal of the information filed against him and (ii) suppression of certain evidence allegedly obtained by government agents

in violation of the Fourth Amendment to the United States Constitution.¹

MOTION TO DISMISS

Mr. Pederson predicates his motion, requesting the court to dismiss the information filed against him in its entirety, upon a plethora of constitutional bases. Having assessed the merits of the arguments advanced by Mr. Pederson in support of each basis proposed, the court finds all to be lacking in merit. Consequently, the motion to dismiss must be DENIED.

The income tax laws of the United States of America are constitutional, having been validly enacted under authority of the Sixteenth Amendment to the United States Constitution. The statute with which Mr. Pederson is charged with violating, i.e., 26 U.S.C. §7203, is one such statute.

26 U.S.C. §7203, which makes it a misdemeanor offense to willfully fail to file an income tax return, is not unconstitutionally vague. See, United States v. Ning, 466 F.2d 1000 (7th Cir. 1972), cert. denied, 409 U.S. 915 (1972).

1. The court notes that Mr. Pederson has denominated his motion to suppress, in the alternative, as a motion in limine. The court finds it appropriate, at this time, to address Mr. Pederson's motion only to the extent it seeks suppression of any evidence obtained in violation of the Fourth Amendment. The propriety of excluding evidence on any other ground asserted by Mr. Pederson will be addressed at the appropriate time during trial. The court finds it ill advised to make such evidentiary rulings in a vacuum.

Mr. Pederson's blanket assertion, to the effect that 26 U.S.C. §7203 and the Internal Revenue Code as a whole are violative of the Fifth Amendment's privilege and due process guarantee is without merit. Taxpayers cannot rely on the Fifth Amendment to justify complete failure to file an income tax return. United States v. Culligan, 274 U.S. 259 (1927); United States v. Gamble, 607 F.2d 820 (9th Cir. 1979), cert. denied, 444 U.S. 1092, reh. denied, 445 U.S. 955 (1980); United States v. Neff, 615 F.2d 1235 (9th Cir. 1980), cert. denied, 447 U.S. 925 (1980); United States v. Turk, 722 F.2d 1439 (9th Cir. 1984).

Mr. Pederson's remaining arguments relating to the constitutionality of 26 U.S.C. §7203 and the Internal Revenue Code as a whole are frivolous.

Finally, Mr. Pederson advances an argument, which is, in essence, a challenge to the sufficiency of the information filed against him. The gist of Mr. Pederson's argument is that the federal income tax system is a voluntary one, in which Mr. Pederson has not chosen to participate. Albeit, Mr. Pederson asserts that the information does not charge an offense, since it does not allege that Mr. Pederson did, in fact, choose to participate in the system. The argument advanced by Mr. Pederson has no basis in the law. The information filed comports with due process of law and sufficiently charges seven violations of 26 U.S.C. §7203. Consequently, Mr. Pederson's motion to dismiss upon the ground that the

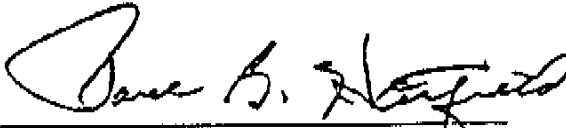
information is insufficient as a matter of law must be DENIED.

MOTION TO SUPPRESS

Mr. Pederson moves to suppress any evidence seized from an August 1, 1984 search of his home.² Mr. Pederson makes the conclusionary assertion that the search was made upon the basis of an invalid search warrant, but fails to present a cogent argument in support of his assertion. Rather, in paragraph IV of his Motion to Dismiss of January 25, 1985, Mr. Pederson advances an incomprehensible argument that the government's "erroneous use of the Fourth Amendment to violate [his] Fifth Amendment due process rights" mandates dismissal of the information. The brief filed by Mr. Pederson fails to further elaborate, but launches into constitutional arguments which the court has previously rejected as without merit. Consequently, the court has no alternative but to DENY Mr. Pederson's motion to suppress.

IT IS SO ORDERED.

DATED this 19th day of February, 1985.



PAUL G. HATFIELD
UNITED STATES DISTRICT JUDGE

2. Mr. Pederson's motion to suppress on Fourth Amendment grounds is incorporated in his motion to dismiss of January 25, 1985, rather than in the motion denominated "Motion to Suppress or Motion in Limine." The latter motion, as previously noted, seeks to exclude evidence on grounds other than an unlawful search and seizure under the Fourth Amendment.