**UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF MONTANA**

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| In re<br><br>**ALFRED CHARLES VERSCHOOT**, and<br>**SANDRA MAY VERSCHOOT**,<br><br>Debtors. | Case No. **04-61722-7** |

# *MEMORANDUM of DECISION*

At Butte in said District this 4th day of April, 2005.

Debtors commenced the above-referenced Chapter 7 case on June 2, 2004. Subsequently, Debtors filed a document entitled "11 USC 9014 motion to contest creditors Mary Koritnik and Larry Colliers claims as falsely stated". The above pleading was filed on August 30, 2004, and was treated by the Court as an objection by Debtors to Proof of Claim No. 2 filed by the Internal Revenue Service ("IRS") on August 9, 2004.[1] Debtors' objection is premised on Debtors' assertion that the United States lacks authority under the Sixteenth Amendment of the United States Constitution to tax income, the belief that income taxes are excise taxes and on allegations that the actions taken by various agents or officers of the IRS were in violation of 26 U.S.C. §

[1] The IRS filed a claim asserting a combined debt against both Debtors in the total sum of $33,669.11, of which $1,684.97 is listed as unsecured, $27,520.09 is listed as secured and $4,464.05 is listed as a priority claim. The unsecured portion of the claim relates to penalties. The secured portion of the claim stems from income taxes owing for the tax years ending December 31, 1995, 1997, 1998, 1999 and 2000. The priority portion of the claim pertains to income taxes owing for the tax year ending December 31, 2001.

7214. The IRS filed a response to Debtors' objection on September 9, 2004, arguing that Debtors' objection is frivolous. In accordance with this Court's Local Rules, the IRS also noticed a hearing on Debtors' objection for October 21, 2004. Debtors received a discharge of their Chapter 7 debts on September 21, 2004.[2]

On October 21, 2004, the date of the hearing on Debtors' objection, Debtors filed a document entitled "Judicial Notice", which the Court has treated as a request that the undersigned recuse himself from this case. Debtors assert in their "Judicial Notice": "The Bankruptcy Judge is a government employee, and is a beneficiary of the tax laws; therefore, the Judge's conflict of interest denies Judge Kircher [sic] impartiality. Judge Kircher [sic] is denied the ability to be impartial and to make findings of facts and conclusions of law in this controversy because the judicial code of ethics requires that such findings of fact and conclusions of law must be made by an impartial judge." Debtors appeared at the October 21, 2004, hearing *in propria persona*. The IRS was represented by assistant U.S. Attorney, Victoria L. Francis ("Francis"). The Court heard argument from Debtor Alfred C. Verschoot and from Francis, but no evidence was admitted. At the hearing, the Court directed Debtors to file an adversary proceeding under 11 U.S.C. § 505 for the determination of tax liability.

When Debtors failed to file an adversary proceeding within 10 days of the October 21, 2004, hearing, the Court entered an Order on November 3, 2004, that reads in relevant part:

> Debtors are granted until on or before November 19, 2004, to file an adversary proceeding for determination of tax liability owed to the Internal Revenue

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[2] Only four creditors have filed claims in this case. In addition to the claim filed by the IRS, Yellowstone Bank filed a secured claim in the sum of $16,717.46 and MBNA/Portfolio Recovery and Capital One Bank both filed unsecured claims for $15,047.36 and $2,460.50, respectively.

> Service; and if the Debtors fail to file an adversary proceeding by November 19, 2004, then this Court will overrule their objection to the IRS's Proof of Claim and deny their motion to recuse without further notice or hearing for lack of diligent prosecution.

Debtors did not file any type of adversary complaint as directed by the Court, but filed a "motion to strike the United States response to objection to proof of claim for reason of fraud practiced by Mary Koritnik and Larry Collier/motion to vacate certain rulings as void" on November 12, 2004, a brief in support of the above motion to strike on November 18, 2004, and a "Motion to vacate Order for Judicial Econmy [sic]" on November 19, 2004.

In an Order entered November 23, 2004, the Court denied Debtors' November 18, 2004, Motion to Vacate on the basis that Debtors failed to demonstrate good cause as to why this Court should vacate the Order entered November 3, 2004. In the same Order, the Court also denied Debtors' request that the undersigned recuse himself from this proceeding for Debtors' failure to properly prosecute the matter in the time permitted by the Court. Finally, in an attempt to afford Debtors their due process of law, the Court also determined, in the Order entered November 23, 2004, that it was appropriate to treat Debtors' objection to the IRS's Proof of Claim and Debtors' November 12, 2004, motion to strike as an adversary proceeding pursuant to F.R.B.P. 3007 and scheduled the matter for trial on January 25, 2005. As set forth in the Court's November 23, 2004, Order, the parties were to confer, prepare and sign a Final Pretrial Order and file the same with the Court on or before January 21, 2005. The Court directed in its November 23, 2004, Order that "Debtors shall be responsible for preparing the Pre-Trial Order and arranging the meeting of the parties attendant thereto." Additionally, Debtors and the IRS were granted until January 21, 2005, to file a list of all witnesses, and to file a list of all proposed exhibits together

with a copy of each exhibit.

Debtors failed to cause a final pretrial order to be filed by the January 21, 2005, deadline. Instead, the IRS filed its own proposed pretrial order on January 21, 2005. Furthermore, the IRS filed a list of witnesses and filed a list of voluminous exhibits along with hard copies of each exhibit on January 21, 2005. Debtors did not identify any witnesses by the January 21, 2005, deadline nor did Debtors file any exhibits.[3] Also, prior to the January 25, 2005, trial date, the IRS filed a Motion for Summary Judgment on January 18, 2005, which motion was accompanied by a Statement of Uncontroverted Facts and a declaration of Sharon Eckberg.

At the time scheduled for the trial, Debtors appeared before the Court once again *in propria persona*. At that time, Debtor Alfred C. Verschoot advised the Court that Debtors would not answer questions put to them by the IRS under oath. Mr. Verschoot affirmed that Debtors would invoke their right to plead the Fifth Amendment of the United States Constitution against self incrimination. As a result, no testimony or exhibits were admitted into evidence at the

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[3] Between November 23, 2004, the date of the Court's Order, and the date of the trial, Debtors filed only 1 pleading on January 11, 2005, entitled "Debtor's [sic] objection and notice to the court Grounds for objection". The above pleading is 6 pages in length and is accompanied by 27 pages of attachments. Debtors' pleading, like many other pleadings filed by Debtors, is often incoherent, rambles on about immaterial matters and attempts to raise every conceivable argument. For instance, page 1 of Debtors' January 11, 2005, objection reads in part:

"This Court is deprived of subject matter jurisdiction to continue examination of the claims of the Internal Revenue Service allegedly against Alfred Charles Verschoot and Sandra May Verschoot.

The record made in 04-61722-7 is silent in regard to the claims of the Internal Revenue Service. Alfred Charles Verschoot and Sandra May Verschoot are compelled to engage discovery to overcome this court's improper ***presumption of facts not in evidence***. All competent jurists know and understand that 'federal bankruptcy judges' are servants of a private administrative legislative tribunal, and as such, are deprived of judicial discretion such as is required to supervise discovery. See *Northern Pipe Line Co., v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982)."

January 25, 2005, trial. The Court, however, heard statements from attorney Francis and from Mr. Verschoot on how they would like to proceed with the matter. After discussions with the parties, the Court granted the IRS until February 14, 2005, to file a supplement to its motion for summary judgment, granted Debtors until March 16, 2005, to file a response to the IRS's supplemented motion for summary judgment and granted the IRS until March 28, 2005, to file a reply to Debtors' response. In an Order entered January 26, 2005, the Court memorialized the foregoing by ruling that after March 28, 2005, the Court would "take the IRS's motion for summary judgment and Debtors' objection to the IRS's Proof of Claim under advisement, and render a decision." In the same Order, the Court further discussed the parties' burdens of proof:

> Applying this analysis to the instant contested matter, there appears to be no allegation that the IRS's Proof of Claim No. 2 filed August 9, 2004, was not filed in accordance with the applicable rules. It appears to be signed, includes attachments, and was served on the parties. If that is so, Proof of Claim No. 2 would be given *prima facie* effect of its validity and amount by Rule 3001(f), thereby placing the burden of proof upon the Debtors to come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves". *Lundell,* 223 F.3d at 1039 (quoting *In re Holm*, 931 F.2d at 623); *Eiesland*, [19] Mont. B.R. at 209.

The IRS also filed a Motion to Compel on January 18, 2005. The Court entered an Order on January 19, 2005, granting the Motion to Compel, giving Debtors 20 days to respond to the IRS's First Request for Production to Alfred Charles and Sandra May Verschoot. In granting the IRS's Motion to Compel, the Court held:

> In the event the debtors should fail to respond within 20 days from the date of this order, the debtors' objection to the IRS proof of claim will be denied.
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> IT IS FURTHER ORDERED that a protective order is hereby issued, and the United States need not respond to the late discovery served on the United States by the debtors, which was in violation of the Court's order dated November

23, 2004.[4]

Debtors did not comply with the Court's directive to respond to the IRS's First Request for Production to Alfred Charles and Sandra May Verschoot, but instead filed a pleading on January 31, 2005, entitled "Debtors' brief in opposition to Victoria L. Francis' motion to compel/objection to motion for protective order/notice of intent to sue/notice of intent to file a criminal complaint against Victoria L. Francis". Debtors assert in the above pleading that "[a]ll competent jurists know and understand that the Constitution reserves the privilege against self-incrimination. Only an idiot would not understand that Francis can, with the sweep of a pen, covert [sic] these proceedings into a trial for willful failure to file and income tax evasion." Debtors' "brief in opposition to Francis' motion to compel/objection to motion for protective order/notice of intent to sue/notice of intent to file a criminal complaint against Victoria L. Francis" was not timely filed and fails to provide a basis in law for the assertions contained therein. Accordingly, upon the Court's own motion, Debtors' brief in opposition to Francis' motion to compel/objection to motion for protective order/notice of intent to sue/notice of intent to file a criminal complaint against Francis is stricken from the record.

Subsequently, the IRS timely filed a Supplement to its Motion for Summary Judgment on February 14, 2005; Debtors filed a timely response on March 15, 2005; and the IRS filed a timely

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[4] According to the Pretrial Scheduling Order, all discovery was to be completed by January 10, 2005. The Court specifically directed that "all written discovery shall be served upon the opposing party or parties well enough in advance of the January 10, 2005, deadline to enable the answering party to complete responses to said written discovery under the time limits set forth in the Federal Rules of Bankruptcy Procedure." Francis alleges in the Motion to Compel that Debtors hand delivered two sets of discovery requests to the IRS on January 10, 2005, leaving no time whatsoever for the IRS to prepare and submit responses to Debtors' discovery requests.

reply to Debtors' response on March 24, 2005. Thereafter, Debtors proceeded to file, on March 30, 2005, an objection "to Victoria L. Francis' continued mendacious attacks on the integrity of the these proceedings/Francis' March 24, 2005[,] paper contains objectionable subject matter due to lack of foundation and fraud practiced by Francis in an attempt to trick, deceive, and mislead this court/notice to this court that Francis' continued frivolous filings in this court warrant this court's acknowledgment that Francis has committed felony extortion - Francis' repeated fraudulent utterances through the U.S. Mail rise to a level of racketeering depriving Francis of the defense of claiming that Francis' numerous frivolous and unfounded documents are a mistake of *fact.*" The pleading filed by Debtors on March 30, 2005, is vexatious and will not be tolerated by the Court. As a consequence, the March 30, 2005, pleading, like Debtors' January 31, 2005, pleading, is stricken from the record and will not be considered by the Court in rendering its decision on Debtors' pending objection or the IRS's motion for summary judgment.

Although Debtors filed a brief in opposition to the IRS's Motion to Compel on January 31, 2005, that document was stricken by the Court. Based upon statements made by Francis in various pleadings, it appears that Debtors did not comply with the Court's Order entered January 19, 2005, in which Debtors were given 20 days to respond to the IRS's First Request for Production. In the Order of January 19, 2005, the Court specifically and unambiguously held that "[i]n the event the debtors should fail to respond within 20 days from the date of this order, the debtors' objection to the IRS proof of claim will be denied."

Debtors' failure to respond to the IRS's First Request for Production is yet another instance where Debtors refuse to comply with orders from this Court and reflects Debtors' disrespect for the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and this Court's

Local Rules. Debtors freely availed themselves to the benefits of the Bankruptcy Code by filing a voluntary bankruptcy petition. However, when the same Bankruptcy Code placed a burden upon Debtors, they showed complete disregard for the entire process. Debtors have simply failed to take any action to assist themselves in this process and even though this Court could deny Debtors' objection on procedural grounds and dispense of this matter once and for all, the Court has instead made every attempt to provide Debtors their day in court by continually overlooking Debtors' shortcomings.

The Court will overlook Debtors' shortcomings and complete disrespect for the bankruptcy process one final time by proceeding to the merits of this case, rather than dismissing this case, as the Court should, for Debtors' failure to respond to the IRS's First Request for Production.

The IRS's motion for summary judgment is a request by the IRS that the Court "deny Debtors' objection to the IRS proof of claim, uphold the IRS calculations as to tax due, and deny Debtors' attempt at a one-sided fishing expedition." In accordance with Mont. LBR 7056-1(a)(1), the IRS's motion for summary judgment was accompanied by a Statement of Uncontroverted Facts, which Statement recites:

> 1. Based on assessments completed prior to the filing of the bankruptcy, Internal Revenue Service liens were filed with the Clerk and Recorder of Stillwater County, in Columbus, Montana. The records reflect that the following tax liens were filed:
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> a. The lien for tax years 1995 and 1997 for Alfred and Sandra Verschoot was filed on April 14, 2003 at 9:23 a.m., under recording number 311883 in the original amount of $2,897.79.
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> b. The lien for tax years 1998 and 1999 for Alfred Verschoot was filed on April 14, 2003 at 9:21 a.m., under recording number

311882 in the original amount of $2,231.33.

c. The lien for tax years 1998, 1999, and 2000 as to Sandra Verschoot was filed on May 21, 2004 at 8:01 a.m., under recording number 317767 in the original amount of $17,325.31.

See proof of claim attached as Exhibit 1 to Eckberg Declaration (hereafter Dec.) and a copy of lien filing information attached. Certified copies of liens from the Stillwater County Clerk and Recorder will be filed as soon as received.

2. Of the income taxes assessed against Alfred and Sandra Verschoot, the assessments for 1995 and 1997 were made jointly against Alfred and Sandra Verschoot on joint returns filed by the Verschoots. The remaining income tax assessments for tax years 1998, 1999, 2000, and 2001 were established under the substitute for return provision of the Internal Revenue Code, 26 U.S.C. § 6020(b), because the Verschoots either neglected or refused to file income tax returns for these years. (Dec. ¶ 4).

3. When an examiner prepares a substitute for return under Section 6020(b), the examiner will obtain income information from W-2s,1099s Social Security income, and other income reported to the United States filed by third parties who have paid income to the taxpayer. Pursuant to law, income paid to a third party must be reported to the United States. This information is kept in the regular course of business by the United States, with access to the Internal Revenue Service, an agency of the United States, at or near the time submitted by the party who paid the taxpayer. (Dec. ¶ 5).

4. **1995 Income Tax Assessment**. The 1995 income tax was assessed based on a jointly filed income tax return filed by Alfred C. and Sandra M. Verschoot. This was a timely filed return and the tax was assessed on May 13, 1996. Attached to the Eckberg Dec. as Exhibit 2 is a true and correct copy of the 1995 tax return jointly filed, showing tax due. This tax has not yet been fully paid. Thus, collection was pursued and a lien was filed.

5. **1997 Income Tax Assessment**. The 1997 income tax assessment is the consequence of a jointly filed income tax return filed by Alfred C. and Sandra M. Verschoot. A true and correct copy of the 1997 return is attached to the Eckberg Dec. as Exhibit 3. An additional tax assessment was made due to the audit of the return and disallowance of certain itemized deductions. Several notices were sent to Alfred and Sandra Verschoot, advising of the proposed adjustment to their joint 1997 income tax return and advising Vershoots of their rights . The dates and types of notices that were sent on the assessment for the 1997 tax year are as follows:

a. September 23, 1998: On this date, a letter from the IRS was sent to the Verschoots, notifying them that their 1997 tax return had been selected for examination. The letter invites Verschoots to contact the IRS within 10 days to set up an appointment. It also requests records and warns that without records to verify expenses, the exam would proceed with the information available. The letter also included notices of the exam process, taxpayer rights, and other publications. A true and correct copy of the September 23, 1998 letter is attached to the Eckberg Dec. as Exhibit 4. The IRS also consults in the examination process the income reported to IRS by third parties. Attached as Exhibit 4a to the Eckberg Dec. is a true and correct copy of income reported for the Verschoots for tax year 1997. Of specific concern on the 1997 tax return, originally filed by the Verschoots, was a large itemized expense in excess of $30,000.00 for gifts on Schedule A.

b. October 13, 1998: On this date, the "30 Day Notice" was sent to the Verschoots. A copy of the proposed changes to the tax calculations is sent with the notice. The notice allowed 30 days to respond by either agreeing to the proposed assessment or requesting a hearing with an appeals officer and advised that if a response was not received, a Ninety (90) Day Statutory Notice of Deficiency would be issued. This notice was mailed to Alfred C. and Sandra M. Verschoot at Route 1, Box 2436, Absarokee, Montana 59001. A true and correct copy of this notice is attached to the Eckberg Dec. as Exhibit 5. The IRS received no earning information or information to verify expenses from the Verschoots in response to this notice. The IRS also verified the address it had been using to send notices to the Verschoots with a postal service request. A true and correct copy is attached to the Eckberg Dec. as Exhibit 9.

c. October 28, 1998: A notice was sent to the Verschoots on this date notifying them that failure to contact the IRS within 15 days will result in a notice of deficiency. It also points out their appeal rights. A true and correct copy of the October 28, 1998 letter is attached to the Eckberg Dec. as Exhibit 6.

d. October 26, 1998: On or about this date, the IRS received a document claiming a refund filed on behalf of the Verschoots by Gene Bridges d.b.a., Associated Tax Consultants. The basis for the claimed refund was an assertion that the Verschoots were "alien individuals." A true and correct copy of the document received by

the IRS is attached to the Eckberg Dec. as Exhibit 7. No objection to any specified amount of tax was given and no income or expense information or documents verifying such were provided. No information showing that the Verschoots were citizens of a foreign country or residents of another country was provided.

e. November 5, 1998: On this date, a notice was sent to the Verschoots reminding them that this would be their last opportunity to provide information to contest the calculation of taxes and that if they did not respond, a Statutory Notice of Deficiency would be issued. A true and correct copy of this letter is attached to the Eckberg Dec. as Exhibit 8. No information or response was received in response to this letter.

f. December 29, 1998: On this date the Statutory Notice of Deficiency was sent to each of the Verschoots notifying them that tax was owed for tax year 1997 in the amount of $1,853.00. These notices included an explanation of the exam and changes to the 1997 tax return, including the disallowance of itemized deductions such as the gift of in excess of $30,000.00, due to failure to provide supporting information. These notices also advised Verschoots of their appeal rights. True and correct copies of the notices are attached to the Eckberg Dec. as exhibits 10 and 10a.

g. March 11, 1999: Gene Bridges, d.b.a. Associated Tax Consultants, sent a response to the Verschoots Notice of Deficiency. The response, in short, states that the Verschoots are non- resident aliens and do not have to pay tax returns. A true and correct copy of this document is attached to the Eckberg Dec. as Exhibit 11. However, no documents supporting this assertion, or supporting expense deductions were submitted. Because no documents were submitted to contest the exam changes and no tax court filing was made, the taxes were assessed on May 24, 1999. See Eckberg Dec. para. 7(g).

h. Verschoots also sent to the IRS, a document titled Chargeback" of Personal Treasury Direct Account seeking an $8,000,000.00 purported "chargeback". A document titled "Bill of Exchange" for $8,000,000.00 was also attached. A true and correct copy of these documents are attached as Exhibit 12 to the Eckberg Dec.

6. **1998 and 1999 Assessments as to Alfred Verschoot and Sandra Verschoot**. The 1998 and 1999 assessments made against Sandra Verschoot and

Alfred Verschoot were assessed under the substitute for return provisions of the Internal Revenue Code § 6020(b). The notices sent to Sandra and Alfred Verschoot for the 1998 and 1999 assessments are as follows, as described in paragraph 8 of the Eckberg Dec:

a. April 20, 2001: On April 20, 2001, a letter was sent to Alfred and Sandra Verschoot regarding identification of the Verschoots as not having filed any Federal or State tax returns for the tax years 1998 and 1999. An appointment was scheduled for May 16, 2001. The 1998 and 1999 returns were to be brought to the appointment, as well as documents to support the returns, including all books and records used in preparing the returns. The letter also notifies Alfred and Sandra Verschoot if they fail to appear for the appointment that the IRS will determine tax liability without regard to expenses or deductions. This is because without the return filed by Alfred and Sandra Verschoot and without supporting documentation, no deductions are known by the IRS. A true and correct copy of the April 20, 2001 letters are attached as Exhibits 13 and 14 to the Eckberg Dec.

b. April 30, 2001: On April 30, 2001, the IRS responded to a request to reschedule the appointment for Alfred and Sandra Verschoot and set the appointment for Wednesday, June 27, 2001. A true and correct copy of the letters are attached as Exhibits 15 and 16 to the Eckberg Dec.

c. June 19, 2001: On or about June 19, 2001, the IRS received a document from Alfred Verschoot referencing that "we", apparently referring to Sandra Verschoot and himself, would be bringing witnesses and a tape recorder to the meeting with the IRS and including many UCC citations, asserting that Verschoots were not taxpayers but non-resident aliens and the United States was a corporation. A true and correct copy of the letter is attached as Exhibit 17 to the Eckberg Dec.

d. The record reflects that Alfred Verschoot appeared as a third party witness to other taxpayer IRS conferences and that he would not be bringing documents or filing returns prior to the meeting scheduled for June 27, 2001. The IRS proceeded to determine taxes for 1998 and 1999 and sent the calculations to Alfred and Sandra Verschoot on June 27, 2001. Sandra Verschoot returned her tax determination letter for taxes owed for 1998 and 1999 as "Refused for Fraud". A true and correct copy of the June 27, 2001

letter and calculations with the refusal notations as received by the IRS is attached to the Eckberg Dec. as Exhibit 18. A copy of the refused document was included with other literature received by the IRS from Sandra and Alfred Verschoot on or about July 22, 2001. True and correct copies of the documents are attached to the Eckberg Dec. as Exhibit 19. Alfred Verschoot, likewise, returned as "Refused for Fraud", the calculations of his 1998 and 1999 tax obligations in a letter dated July 22, 2001. A copy of the Alfred Verschoot response is attached to the Eckberg Dec. as Exhibit 20.

e. Other documents were sent to the IRS by the Verschoots, many of which consisted of returning letters sent by the IRS to the Verschoots with the Verschoots writing on these letters "Refused for Fraud", "I am not a taxpayer" and similar statements with UCC citations. Attached to the Eckberg Dec. as Exhibit 21 is a true and correct copy of the documents received from the Verschoots. However, what the Verschoots did not provide is any tax returns prepared by the Verschoots or any income information or expense information or verification, nor do the Verschoots provide any evidence that they are non-residents of the United States, or that they are not citizens but aliens.

f. March 11, 2002 Notice of Deficiency: The initial calculations that the IRS made for the Verschoots for tax years 1998 and 1999 were adjusted as to penalty calculations. On March 11, 2002, Notices of Deficiency were sent to the two separate addresses for which the IRS had received correspondence from the Verschoots, 37 Cottonwood Way, Absarokee, Montana 59001, and Route 1 Box 2436, Absarokee, Montana 59001, for both Sandra and Alfred Verschoot. Taxes for Sandra Verschoot were $3,610.00, plus penalties and interest as shown in the explanation of tax section of the notice, and $3,873.00, plus penalties and interest for 1999, as described in the explanation of tax section. A true and correct copy of the Notices of Deficiency sent to Sandra Verschoot are attached to the Eckberg Dec. as Exhibits 22 and 23. Notices of Deficiency for Alfred Verschoot for tax years 1998 and 1999 went to both of the above addresses as well, reflecting $574.00, plus penalties and interest for 1998 and $754.00, plus penalties and interest for 1999. True and correct copies of the Notices of Deficiency sent to Alfred Verschoot are attached to the Eckberg Dec. as Exhibits 24 and 25. Earning information for Sandra Verschoot to calculate her 1998 and 1999 returns was obtained from reporting to the IRS by employers, retirement plans, and other

sources . A true and correct copy of the earning information for Sandra Verschoot is attached to the Eckberg Dec. as Exhibit 26. Similar earning information, social security payments and the like were obtained for Alfred Verschoot. A true and correct copy of that information is attached to the Eckberg Dec. as Exhibit 27.

7. **Collection Due Process Review**: Sandra Verschoot initiated a Collection Due Process Review (hereafter CDP), in response to a Notice of Intent to levy for taxes owed for the tax years 1998 and 1999. Documents and discussion of that appeal are set forth in the Eckberg Dec. ¶ 9. Specifically, relating to that appeal information includes the following:

a. A true and correct copy of Sandra Verschoot's request for CDP review is attached to the Eckberg Dec. as Exhibit 28. The Appeal Office for the Internal Revenue Service acknowledged receipt of the CDP review with a letter dated April 1, 2003, explaining the process. A true and correct copy of this letter is attached as Exhibit 29 to the Eckberg Dec.

b. An additional letter was sent by the Appeal Office to Sandra M. Verschoot on May 6, 2003, identifying the issues at a CDP hearing and including enclosures. Specifically, because Sandra Verschoot did not file a proceeding contesting the Notices of Deficiency for tax years 1998 and 1999 within 90 days of the notice, calculation of the amount of tax owing was not at issue. Thus, only collection actions were to be at issue. Also, the May 6, 2003 letter specifically notes that the administrative CDP process was not set up to be a forum for frivolous arguments, that taxes are not owed on constitutional grounds. Enclosed with the appeals letter was a copy of the document tilted "The Truth About Frivolous Tax Arguments." Attached to the Eckberg Dec. as Exhibits 30 and 31 are the May 6, 2003 letter and a copy of the document titled "The Truth About Frivolous Tax Arguments".

c. The Notice of Determination of the CDP Appeal was issued on September 26, 2003. A true and correct copy of that determination is attached to the Eckberg Dec. as Exhibit 32. To dispute the determination one must file an action in the United States Tax Court within 30 days. No tax court proceeding has been initiated.

8. **Tax Year 2000, Sandra Verschoot**. Substitute for Returns were prepared for Sandra Verschoot for tax year 2000 and are discussed in paragraph 10 of the Eckberg Dec. The relevant documents related to the 2000 assessments are as follows:

a. On September 30, 2002, the IRS notified Sandra Verschoot that it had not received any income tax return for her for the tax year 2000 and that the IRS had calculated taxes due based on information from employers, banks, and other payers. This information was reported on Forms W-2, W-2P, 1099 and other reporting forms. The calculation of taxes for 2000 was enclosed in the letter. The amount of taxes due for tax year 2000 was $4,269.00. Sandra Verschoot was invited to respond with information for the IRS to consider. A true and correct copy of the September 30, 2002 letter regarding tax year 2000 is attached to the Eckberg Dec. as Exhibit 33.

b. Sandra Verschoot responded to the notice with a letter dated October 14, 2002, challenging the authority of the IRS to tax her and enclosing a copy of the September 30, 2002 letter and explanation of taxes owed stamped "Refused for Fraud." A true and correct copy of this response is attached to the Eckberg Dec. as Exhibit 34. However, no income or expense information was provided by Sandra Verschoot to contradict the calculations.

c. On December 31, 2000, the Notice of Deficiency was mailed to Sandra Verschoot, showing taxes due for the year 2000 in the amount of $4,269.00, plus additional penalty and interest. A true and correct copy of the Notice of Deficiency is attached to the Eckberg Dec. as Exhibit 35. To contest the calculated amount, the taxpayer is to file an action with the United States Tax Court within 90 days. No tax court action was initiated by Sandra Verschoot. See Eckberg Dec. para. 10 c.

9. **Tax Year 2001 Sandra Verschoot**. Sandra Verschoot did not file tax returns for tax year 2001. The IRS prepared substitute for returns for this tax year as well. See Eckberg Dec. ¶ 11. The documents showing notice and an explanation of the calculation are as follows:

a. On August 15, 2003, notice was sent to Sandra Verschoot at both the Route 1, Box 2436, Absarokee, Montana address and at the 37 Cottonwood Way, Absarokee, Montana address, that a substitute for return calculation of taxes due was enclosed as well as various other publications. The notice further provides that if Ms. Verschoot did not respond that a Notice of Deficiency would issue. A true and correct copy of the letters without enclosure is attached to the Eckberg Dec. as Exhibit 36.

b. On February 27, 2004, a Notice of Deficiency was issued to Sandra Verschoot for tax year 2001 reflecting taxes owed of $4,004.00, plus additional penalty and interest, sent to the 37 Cottonwood Way, Absarokee, Montana address. Tax calculations and an explanation of the assessments were also enclosed. A true and correct copy of the Notice of Deficiency is attached to the Eckberg Dec. as Exhibit 37. Taxes were prepared based on earning information provided by third party sources, by W-2, 1099, and other reporting, a true and correct copy of which is attached to the Eckberg Dec. as Exhibit 38. Request for address information, which was provided by the U.S. Postal Service reflected 37 Cottonwood Way, Absarokee, Montana as the address for Alfred and Sandra Verschoot. Attached to the Eckberg Dec. as Exhibit 39 is a true and correct copy of the address Information Request.

10. A review of the IRS records does not reflect any action filed by either Alfred Verschoot or Sandra Verschoot within 90 days of the Notice of Deficiency for the tax years at issue in United States Tax Court, or to date, challenging the tax assessments filed in tax court, nor have the Verschoots paid the taxes owing and filed a claim for refund in the United States District Court. Also, after a review of all information provided by Sandra and Alfred Verschoot, there are no documents regarding earning information or expense or deductions provided by the Verschoots, despite numerous invitations to do so, including Requests for Production issued by the United States on December 10, 2004. See Declaration of Victoria L. Francis filed in support of Motion to Compel. The only responses provided by Verschoots are Constitutional or non-resident alien arguments, without any documentation as to the alien country in which Verschoots were born or any non-resident address.

In response to the IRS's motion for summary judgment, Debtors argue:

Brief in opposition

All competent jurists know and understand that summary proceedings do not empower the court to evaluate and determine factual matters reserved for trial. The only purpose of summary proceedings is to determine whether facts are in dispute, or where facts are not disputed, whether reasonable persons would likely to [sic] come to differing conclusions regarding the facts.

Memorandum of law

The Sixteenth Amendment, the so-called income tax amendment, conferred no new power of taxation but simply prohibited the previous complete

and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it is inherently belonged. See *Stanton v. Baltic Mining Co.*, 240 U.S. 103, at page 112 (1916).

The so-called income tax is an indirect tax in the nature of an excise tax. See *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, at page 18 (1916).

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges, which is measured by reference to the income, which they produce. The income is not the subject of the tax: it is the basis for determining the amount of the tax. House Congressional Record, 3-27-43, page 2580.

The so-called income tax does not in fact apply to all income from whatever source derived but to "taxable income." See 26 U.S.C. § 1.

It is a felony punishable by discharge from employment, five years in prison, and up to Ten Thousand Dollars in Fines for any Officer of the United States Government to use the powers of their office extortionately, to ask for or demand sums other than or greater than authorized by law, to prepare and submit false documents regarding a tax bill due, or to fail to report a violation of the revenue laws. See 26 U.S.C. § 7214(a)(1)(2)(7)&(8).

After setting forth the foregoing, Debtors proceed to provide in their brief:

Triable Issues of Fact to Which There Is No Dispute

1. Counsel or agents purporting to represent the United States have failed or refused to identify a revenue taxable activity which Alfred C. and Sandra M. Verschoot are engaged in.

2. Counsel or agents purporting to represent the United States have failed or refused to identify a statute enacted by Congress articulating that any revenue taxable activity which Alfred C. and Sandra M. Verschoot are allegedly involved in makes them subject to and liable for a tax.

3. Counsel or agents purporting to represent the United States have failed or refused to identify any statute articulating the formulation for determining the taxable income of Alfred C. and Sandra M. Verschoot.

4. Counsel or agents purporting to represent the United States have unclean hands by preparing and submitting false documents, a felony, with the intention that this court and Alfred C. and Sandra M. Verschoot rely on the false

documents to the detriment of Alfred C. and Sandra M. Verschoot losing money and property.

* * *

Voir Dire of the Bankruptcy Court

Please state what statute, rule, or law empowers this Bankruptcy Court to make judicial rulings in contravention of *Northern Pipe Line Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982).

Before the Court addresses the merits of the pending motion for summary judgment and objection to claim, the Court will first respond to Debtors' above inquiry as to the statute, rule, or law that empowers this Court to make judicial rulings such as in the instant matter. Under former 28 U.S.C. § 1471(a) and subsequently under 28 U.S.C. § 1334(a) and (b), Congress provided District Courts with broad jurisdiction to resolve almost any issue that arises in a bankruptcy case or adversary proceeding. However, the similarly broad jurisdiction granted to bankruptcy courts in the Bankruptcy Act of 1978 was voided by the United States Supreme Court ("Supreme Court") in the case of *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982). In *Marathon*, the Supreme Court held that the Congressional grant of jurisdiction to bankruptcy courts to decide "private rights" matters was unconstitutional. *Id.* at 87. In finding that the 1978 Act unconstitutionally conferred Article III judicial power upon judges who lacked life tenure and protection against salary reduction, the plurality was primarily concerned with the impact of the 1978 Act upon the ability of the judiciary in our system of checks and balances to remain independent of the other branches of government. *Id*. at 57-60.

In response to the *Marathon* decision, Congress amended 28 U.S.C. § 1334 in the

Bankruptcy Amendment Act of 1984. As explained in the Editor's Comment to 28 U.S.C. § 1334: "Section 1334 was amended by § 101 of the Bankr Amend Act of 1984 to give the federal District Courts original and exclusive jurisdiction over all bankruptcy cases in response to the decision of the United States Supreme Court in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 73 L.Ed.2d 598, 102 S.Ct. 2858, 9 Bankr. Ct. Dec. (CRR) 67, 6 Collier Bankr. Case. 2d (MB) 785, Bankr. L. Rep. (CCH) ¶ 68698 (1982), holding 28 U.S.C. § 1471, as enacted by the Reform Act of 1978, an unconstitutional grant of power to a non-Article III court." In discussing the new grant of jurisdiction under § 1334, the Supreme Court, in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 1499, 131 L.Ed.2d 403 (1995), explained:

> The jurisdictional grant in [28 U.S.C.] § 1334(b) was a distinct departure from the jurisdiction conferred under previous Acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction. *See* S.Rep. No. 95-989, 2nd Sess., pp. 153, 154 (1978) U.S.Code Cong. & Admin.News 1978, pp. 5787, 5939, 5940. We agree with the views expressed by the Court of Appeals for the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), that "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate," *id*., at 994; *see also* H.R.Rep. No. 95-595, pp. 43-48 (1977), and that the "related to" language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate. We also agree with that court's observation that a bankruptcy court's "related to" jurisdiction cannot be limitless. *See Pacor, supra*, at 994; cf. *Board of Governors, FRS v. MCorp Financial, Inc.*, 502 U.S. 32, 40, 112 S.Ct. 459, 464, 116 L.Ed.2d 358 (1991) (stating that Congress has vested "limited authority" in bankruptcy courts).

The Supreme Court in *Celotex*, 514 U.S. at 308, fn.6, also acknowledged that the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted the following *Pacor* test for determining the existence of "related to" jurisdiction with little or no variation:

> "The usual articulation of the test for determining whether a civil proceeding is

> related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy....* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id*., at 994 (emphasis in original; citations omitted).

As noted above, the Ninth Circuit Court of Appeals adopted the *Pacor* definition in *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988). This Court has previously recognized that § 1334 sets forth four possible grounds for jurisdiction in federal courts. *In re Mincomp Exploration, Inc.*, 1 Mont. B.R. 406, 409 (Bankr. D. Mont. 1986). "First, the district courts have exclusive jurisdiction over all bankruptcy cases 'under title 11' of the United States Code. 'Under title 11' refers to bankruptcy proceedings. *In re Wood*, 825 F.2d 90, 92 (5th Cir.1987). The second and third grounds involve core proceedings 'arising under' title 11 or "arising in a case under" title 11. These are causes of action which are expressly created by title 11. *In re S & M Constructors, Inc.*, 144 B.R. 855, 859 (Bkrtcy.W.D.Mo.1992).

Fourth, district courts have jurisdiction over matters which are 'related to' a bankruptcy proceeding. The test for deciding whether a civil proceeding is 'related to' bankruptcy is 'whether the outcome of the proceeding could conceivably have any effect on the estate being administered.' *In re Fietz*, 852 F.2d 455, 457 (9th Cir.1988) (Thompson, J., adopting, without limitation, the test set out by the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984))." *Williams v. Shell Oil Co.*, 169 B.R. 684, 688 (S.D. Cal. 1994).

Original jurisdiction of all cases under Title 11 and all civil proceedings under Title 11, or arising in or related to cases under Title 11 is conferred upon Federal District Courts pursuant to 28 U.S.C. § 1334(a) and (b). By order of general reference, Standing Order No. 12 (Revised),

entered May 24, 1985, all matters described in § 1334(a) and (b) were referred by the District Court of Montana to this Court.

Under 28 U.S.C. § 157(b)(2)(B), the "allowance or disallowance of claims against the estate" is a core proceeding. Thus, under 28 U.S.C. § 1334 and the above authority, this Court does have the authority to decide both Debtors' objection to the Proof of Claim filed by the IRS and the IRS's motion for summary judgment. Debtors' reliance on *Marathon* is misplaced given amendments to the Bankruptcy Code and Title 28 following the entry of the *Marathon* decision in 1982.

Turning to the IRS's motion for summary judgment, the Court notes that although Debtors filed opposition to the IRS's motion, Debtors failed to file a statement of genuine issues. Mont. LBR 7056-1(a)(2) and (3) specifically provide:

> (2) **Opposition**. Opposition to a motion for summary judgment, if any, must be filed within ten (10) days after the motion is served. A separate, short, and concise "Statement of Genuine Issues", setting forth the specific facts, which the opposing party asserts establishes a genuine issue of material fact precluding summary judgment in favor of the moving party must be filed by the party opposing the motion together with an opposition brief.
>
> (3) **Facts Admitted**. All material facts in the moving party's Statement of Uncontroverted Facts are deemed to be admitted unless controverted by a Statement of Genuine Issued filed by the opposing party.

Because Debtors failed to file a statement of genuine issues and because Debtors do not dispute, in their opposition filed March 15, 2005, any of the facts set forth in the IRS's Statement of Uncontroverted Facts, the Court accepts all averments set forth in the IRS's Statement of Uncontroverted Facts as true, accurate and uncontested by Debtors.[5]

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[5] In the Ninth Circuit, "[i]gnorance of court rules [generally] does not constitute excusable neglect, even if a litigant appears pro se." *Briones v. Riviera Hotel & Casino*, 116

Debtors did not prosecute their objection to claim or respond to the merits of the IRS's motion for summary judgment, but incant the standard tax protester mantra. This court and others have rejected Debtors' Sixteenth Amendment theory countless times, and the Court does not hesitate to do so again here. *In re Allison*, 17 Mont. B.R. 223, 241 (Bankr. D. Mont. 1998). *See also, Quijano v. U.S.*, 93 F.3d 26, 30 (1st Cir.1996); *U.S. v. Mundt*, 29 F.3d 233, 237 (6th Cir.1994); *Sochia v. C.I.R.*, 23 F.3d 941, 944 (5th Cir.1994); *Miller v. U.S.*, 868 F.2d 236, 240 (7th Cir.1988). Indeed, in *Knoblauch v. C.I.R.*, 749 F.2d 200, 201-02 (5th Cir. 1984), *cert. denied*, 474 U.S. 830, 106 S.Ct. 95, 88 L.Ed.2d 78 (1985), the court noted that every court that has considered the Sixteenth Amendment argument has rejected it.

For Debtors' benefit, the Court would note that all citizens of the United States are liable for income taxes and every person born in the United States is a citizen of the United States. *See* 26 C.F.R. § 1.1-1(b)(c); For over eighty-eight years, the Supreme Court has recognized that the Sixteenth Amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves. *See Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 12-19, 36 S.Ct. 236, 60 L.Ed. 493 (1916). Moreover, federal courts are in agreement that wages or compensation for services constitute income and that individuals receiving income are subject to the federal income tax – regardless of its nature. *See, e.g., Brushaber*, 240 U.S. at 17; *U. S. v. Sloan*, 939 F.2d 499, 500-01 (7th Cir.1991), *cert. denied*, 502 U.S. 1060 (1992); *Coleman v. C.I.R.*, 791 F.2d 68, 70 (7th Cir.1986) ("Wages are income, and the tax on wages is constitutional.") (citations omitted); *Simmons v. U.S.*, 308 F.2d 160, 167-68 (4th Cir.1962).

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F.3d 379, 381 (9th Cir. 1997) (*quoting Swimmer v. IRS*, 811 F.2d 1343, 1345 (9th Cir. 1987)). "Pro se litigants must follow the same rules of procedure that govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

Additionally, the duty to file returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. 26 U.S.C. § 1. Section 63 defines "taxable income" as gross income minus allowable deductions. 26 U.S.C. § 63. Section 61 states that "gross income means all income from whatever source derived," including compensation for services. 26 U.S.C. § 61. Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he is liable. 26 U.S.C. §§ 6001 & 6011. Finally, section 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. 26 U.S.C. § 6012. The duty to pay federal income taxes, therefore, is "manifest on the face of the statutes, without any resort to IRS rules, forms or regulations." *U. S. v. Bowers*, 920 F.2d 220, 222 (4th Cir.1990). Based on the patently frivolous nature of Debtors' arguments in support of their objection and in opposition to the IRS's motion for summary judgment, said arguments are rejected by this Court. This Court agrees with the sentiments stated by Justice Blackmun in his dissenting opinion in *Cheek v. U.S.*, 498 U.S. 192, 209, 111 S.Ct. 604, 615,112 L.Ed.2d 617 (1991):

> [I]t is incomprehensible to me how, in this day, more than [90] years after the institution of our present federal income tax system with the passage of the Income Tax Act of 1913, 38 Stat. 166, any taxpayer of competent mentality can assert . . . the proposition that the wage he receives for his labor is not income, irrespective of a cult that says otherwise and advises the gullible to resist income tax collections.

Taking the averments set forth in the IRS's Statement of Uncontroverted Facts as true, and after rejecting Debtors' frivolous tax protestor arguments, the Court finds that the IRS is entitled to summary judgment and further concludes that Debtors' objection to claim must be overruled.

However, even if the Court were to accept Debtors' warped and crabbed arguments as a viable defense to the IRS's motion for summary judgment, the Court would nonetheless deny Debtors' objection to claim on the merits. Rule 3001(f), F.R.B.P., provides that a proof of claim completed and filed in accordance with 11 U.S.C. § 501 and any applicable Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. *In re Carlascio*, 16 Mont. B.R. 429, 430-31 (Bankr. D. Mont. 1998)*; In re Holm* , 931 F.2d 620, 623 (9th Cir.1991) ("the proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.') (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed.1991))"). Thus, if a procedurally proper claim is filed, an objecting party carries the burden of going forward with evidence contesting the validity or amount of the claim. *Carlascio*, 16 Mont. B.R. at 430-31; *In re Weber*, 16 Mont. B.R. 49, 56 (Bankr. D. Mont. 1997); *Holm*, 931 F.2d at 623. However, once the objecting party succeeds in overcoming the *prima facie* effect given the claim by Rule 3001(f), the burden shifts to the claimants to prove the validity of their claims by a preponderance of the evidence. *Carlascio*, 16 Mont. B.R. at 430-31; *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992).

Moreover, the Ninth Circuit has held that a tax claim is not based upon a writing. *In re Los Angeles Int'l Airport Hotel Assoc.*, 106 F.3d 1479, 1480 (9th Cir. 1997). Therefore, F.R.B.P. 3001 does not require that the IRS support its Proof of Claim with any documentation. *Id*. ("*See In re Vines*, 200 B.R. 940, 949 (M.D.Fla.1996) ("[T]he IRS was not required to attach any documentation to its Proof of Claim because the claim ... [is] based not on a writing, but on federal statutes."); *In re White*, 168 B.R. 825, 834 (Bankr.D.Conn.1994) (same); *see also In re Jenny Lynn Mining Co.*, 780 F.2d 585, 587 (6th Cir.) (where basis of claim is statutory, no

documentation would have provided additional notice to debtor), *cert. denied*, 477 U.S. 905, 106 S.Ct. 3276, 91 L.Ed.2d 566 (1986)").

Even though the Court discussed Debtors' burden of proof with respect to their objection in the Order entered January 26, 2005, Debtors have not made any allegation that the IRS failed to comply with applicable rules when it filed Proof of Claim No. 2 on August 9, 2004. Debtors instead rely on the standard tax protestor arguments, which include the unfounded allegation that the IRS does not have the authority to impose income taxes on wage earners.

As noted by the Court in its earlier Order, Proof of Claim No. 2 is signed, includes attachments, and was served on Debtors. The IRS's Proof of Claim, which contains attachments, is thus entitled to the *prima facie* effect of its validity and amount by Rule 3001(f), F.R.B.P. Consequently, the burden is on Debtors to "come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" *Lundell,* 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)); *In re Eiesland*, 19 Mont. B.R. 194, 209 (Bankr. D. Mont. 2001).

Debtors pleadings that raise only frivolous arguments do not sustain Debtors' burden of proof. Debtors' baseless objection against the IRS does nothing more that burden the IRS with demands to substantiate their claim. The fact that Debtors are *pro se* in no way excuses them from compliance with the Bankruptcy Code and applicable Rules, nor does it enable them to burden this Court and creditors with frivolous and vexatious pleadings that are disrespectful to this Court and the opposing party.

Debtors have unnecessarily and intentionally burdened this Court and the IRS with a sham objection that is devoid of any allegation of factual content. Accordingly,

IT IS ORDERED that the Court shall enter a separate Order granting the IRS's Motion for Summary Judgment; overruling Debtors' Objection to Proof of Claim No. 2 filed by the IRS; and allowing Proof of Claim No. 2 filed by the IRS as filed.

BY THE COURT

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana