

Keren Prior
Archuleta County Assessor
P.O. Box 1089
Pagosa Springs, CO 81147

Date Cert Mail# 0000-0000-0000-0000-0000

Dear Ms. Prior,

You are receiving this NOTICE under CRS 24@72@101 et seq., a.k.a. Colorado Open Records Act (CORA), requesting the legal support for personal property taxation as it was being implemented against me on the property I owned described below. I believe the following requested documentation is crucial for people domiciled in Archuleta County to have, and hereby request the waiver of costs for production of same. However, should you disagree, you have my firm promise to pay reasonable costs for locating, copying, and mailing to me the following with all due alacrity. Failure to respond is a violation of CORA as described below, and if no response is made by you, then these conclusions shall be deemed to be admitted by you, and it shall be construed as "bad faith" and fraud as ruled in McNALLY v. UNITED STATES, 483 U.S. 350, 372 (1987), supra, and;

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . . Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

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Brief and Memorandum of Law

"If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief,

without trusting to despised petitions or disturbing the public tranquility." Journals of the Continental Congress. 26 October, 1774©1789. Journals 1: 105©13.

All government officials and agencies, including all State legislatures, are bound by the Constitution and must NOT create any defacto laws which counter the Constitution:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof;... shall be the supreme law of the land; and the judges in every state shall be bound thereby... The Senators and Representatives and members of the State legislature, and all executive and judicial officers of the United States and the several States, shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." The Constitution of the united States of America, Article VI, Cl 2, 3.

"The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." Reid v Covert 354 US I, 1957.

Any laws created by government which are repugnant to the Constitution carry NO force of law and are VOID:

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution JTM) it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it." Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886). See also Bonnett v Vallier, 136 Wis 193, 200; 116 NW 885, 887 (1908); State ex rel Ballard v Goodland, 159 Wis 393, 395; 150 NW 488, 489 (1915); State ex rel Kleist v Donald, 164 Wis 545, 552-553; 160 NW 1067, 1070 (1917); State ex rel Martin v Zimmerman, 233 Wis 16, 21; 288 NW 454, 457 (1939); State ex rel Commissioners of Public Lands v Anderson, 56 Wis 2d 666, 672; 203 NW2d 84, 87 (1973); and Butzlaffer v Van Der Geest & Sons, Inc, Wis, 115 Wis 2d 539; 340 NW2d 742, 744-745 (1983).

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void;" and the courts, as well as other departments, are bound by that instrument." *Marbury v Madison*, 5 US 1803 (2 Cranch) 137, 170-180, and *NORTON v. SHELBY COUNTY*, 118 U.S. 425.

"When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void." 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.

"[p]owers not granted (to any government) are prohibited." *United States v. Butler*, 297 U.S 1, 68 (1936).

"Insofar as a statute runs counter to the fundamental law of the land, (constitution) it is superseded thereby." (16 Am Jur 2d 177, Late Am Jur 2d. 256)

"...all laws which are repugnant to the Constitution are null and void' (*Marbury v Madison*, 5 US 1803 (2 Cranch) 137, 174, 170).

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." - *Miranda v. Arizona*, 384 U.S. 436, 491.

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. U.S.*, 230 F 2d 486, 489.

"There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights."- *Sherar v. Cullen*, 481 F. 945.

To disregard Constitutional law, and to violate the same, creates a sure liability upon the one involved:

"State officers may be held personally liable for damages based upon actions taken in their official capacities." *Hafer v. Melo*, 502 U.S. 21 (1991).

I have a right to question and challenge any taxing activities by government as to their validity and legal standing:

"Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of limitations upon his authority." *The United States Supreme Court, Federal Crop Ins. Corp, v. Merrill*, 332 US 380-388 L1947)

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. United States Supreme Court reminds us in *Hale v. Henkel*, 201 U.S. 43 (1906):

"The legal right of an individual to decrease or ALTOGETHER AVOID his/her taxes by means which the law permits cannot be doubted" --*Gregory v. Helvering*, 293 U.S. 465

"The fact is, property is a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree; income the 'fruit.' The fruit, if not consumed (severed) as fast as it ripens, will germinate from the seed... and will produce other trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat... it is no tree, and will produce itself no fruit." *Waring v. City of Savannah*. 60 Ga. 93, 100 (1878).

The point being made is that the tree (private property, land, wages, salaries, compensation) is NOT taxable, while the "fruit" (or "income" FROM said property or wages) of the tree CAN possibly be taxed, (but only according to constitutional provisions). Tax upon income derived from, say, rental property, CAN be taxed, but ONLY according to the Constitution, because the tax does NOT diminish "tree," the principal, or lessen the value of the person or property. Property taxation diminishes the "tree" itself, (the wealth of the person) thereby creating a possible situation where the tree could disappear because of the tax.

Property Taxation in Archuleta County:

Property taxation must fall within constitutional guidelines set forth for all People of our nation. To be applied other than under Constitutional parameters is to make such a law or application null and void and is a violation of our constitutional rights.

Direct taxes must be "apportioned among the several states which may be included within this Union". [See Article I, Section 2, Clause 3 and Article 1, Section 9, Clause 4.] These include taxes directly upon people or personal property.

"...all duties, imposts and excises [indirect taxes], shall be uniform throughout the United States". [See Article I, Section 8, Clause 1.]

"Apportionment" means according to the census... the actual number of people in the county or state. "Uniform throughout the United States" means the tax is the same everywhere, such as alcohol, tobacco and other excise taxes, where all Americans pay the same tax regardless of the state they are in.

"Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes and the rule of uniformity as to duties, imposts and excises." ...determining that, the classification of Direct adopted for the purpose of rendering it impossible for the government to burden, by taxation, accumulation of property, real or personal, except subject to the regulation of apportionment..." Pollock v. Farmers' Loan & Trust Co. 158, U. S. 601, at 637 (1895).

"The name of the tax is unimportant that it is the substance and not the form which controls;' that the limitations of the constitution cannot be 'frittered away' by calling a tax indirect when it is in fact direct." Pollock v. Farmers' Loan and Trust Co., 157 U. S. 429, 580?1, 583 (1895).

"That decision affirms the great principle that what cannot be done directly (direct taxation) because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result." Fairbanks v. U.S. 181 U.S. 283, 294 (1901).

"If it be true by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizen of each state. But constitutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has been established by repeated decisions of this court." Id. At 296.

The Constitution of the United States of America and Case law shows that capitation taxes and taxes on my personal private property are in the category of direct taxes as being applied to me today by Archuleta County, but which must be apportioned among the States as required by the United States Constitution if it is a direct tax. (See Supreme Court Case law - Penn Mutual Indemnity Co. v. C.I.R., 277 F.2d 16, 19-20 (3rd Cir. 1960); Steward Machine Co. v. Davis, 301 U.S. 548, 581-582 (1937)).

The Constitution of the United States of America and Case law shows that since capitation taxes and taxes on my personal private property must be apportioned among the States in accordance with the United States Constitution, and my

personal private property tax is NOT being legally apportioned among the States (or Colorado state) by Archuleta County, they must, therefore, be in the category of indirect taxes, which are taxes imposed on the happening of an event or activity.

"Direct taxes bear immediately upon persons, upon possessions and enjoyments of rights. Indirect taxes are levied upon the happening of an event..." Knowlton v. Moore. 178 U.S. 41. See also, Tyler v. United States, 281 U.S. 497, at 502 (1930)

"A tax laid upon the happening of an event as distinguished from its tangible fruits, is an indirect tax..." Tyler v. U.S. 497 at pg 502 (1930)

"A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise, duty or impost." Manufactures' Trust Co. vs. U.S., 32 F. Supp. 289.

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." Murdock vs. Com. of Penn., 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943)

All Citizens have the right to a home and personal property, and this property cannot be taxed unless in accordance with the two forms of Constitutional taxation mentioned above.

"Keeping in mind the well settled rule, that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." Spreckles Sugar Refining Co. vs. McLain: 192 US 397.

In Archuleta County records or documentation, I do not find any tax imposed on any activities I am involved in as rights under the Constitution, nor do I find a section in the Colorado Revised Statutes or county law that makes me subject to or liable for any direct or indirect, unconstitutionally applied private property tax.

Affidavit of Truth - Specific Negative Averment

1. I am not in receipt of any documentation showing what type of taxes I was being assessed for, direct, indirect or named other type of tax.
2. I am not in receipt of any documentation showing Archuleta County's legal and constitutional authority, including statutory law (positive law) to tax, directly or

indirectly, my personal, private property, since it was being applied as neither direct nor indirect according to law.

3. I am not in receipt of any documentation showing I was legally liable for private property taxes applied contrary to the Constitution of the U.S.A.

4. I am not in receipt of any documentation showing the name of the responsible party who authorizes said personal property taxes, and their jurisdiction on this issue, nor signature and printing of that name included in the document.

5. I am not in receipt of any documentation showing why I was liable for the above listed A-E, itemized taxes being assessed against me, nor documentation showing the benefits I personally received for each of these taxes... i.e. how was I being represented by these taxes.

6. I am not in receipt of any documentation showing the method of assessment, the rules for assessment, the financial criteria used for this assessment or copy of any independent, certified appraisal of said property.

7. I am not in receipt of any documentation showing the name and company name of independent appraiser, or the legal, certified status of said appraisal.

I am making a request for documents under the COLORADO PUBLIC (OPEN) RECORD ACT (CORA) regarding the following:

1. Documentation regarding which type of tax my private property County taxes fell under; "direct" or "indirect," or other taxing category, naming the specific category.

2. Please provide certified documents showing Archuleta County's legal and constitutional authority, including statutory law (positive law) to tax, directly or indirectly, my personal, private property, including on land and home, since it was being applied as neither direct nor indirect.

3. Please provide documentation of who the responsible party is who authorized said taxes, and their jurisdiction on this issue, to include signature and printing of that name on this document. There must be statutory law (positive law) that exists which allows this taxation, but it cannot be in conflict with the Constitution;

4. Please provide documentation on how I was being represented by the following taxes being assessed against my personal property:

(List all taxes on your assessment)

5. Please provide documentation showing the method of assessment, the rules for assessment, the financial criteria used for this assessment, and copy of independent, certified appraisal of said property.

6. Please provide a complete record of all taxes paid by me on the property listed below, since purchase on January 16, 2004, to include itemization of taxes for land, taxes for buildings on said land, or any other taxed item.

7. Please provide documentation of who actually signs/verifies/authenticates the assessments on real and personal property, and on any delinquency notices for unpaid taxes. An unsigned assessment is insufficient legal notice and a nullity, unless you can document and verify otherwise.

My right to not be taxed illegally or unconstitutionally stands firm in law, but this right appears to me to have been violated through forced private property taxation by Archuleta County, and the exercise of my right to not be illegally taxed can be "converted into a crime" for not paying these taxes.

Actual and Constructive Notice

This is actual and Constructive Notice that I believe this to be criminal activity against me personally and I am requesting legal rebuttal, point by point, of these positions, or it will be presumed to be a correct assessment of my personal situation.

If not contested, a refund of all monies paid during ownership, with compensatory damages (or agreeable settlement), will be expected no later than 30 days from date of this document, or 5% interest rate per month will accrue on total as outlined above. The application of force or coercion in any way which counters the supreme law of the land, and which extracts financial consideration from me, under the color of law, is criminal conversion and fraud under UCC laws, Common Law, and is a violation of the Racketeering (RICO) laws.

Finally, the auction or sale of private or business property for presumed past due property taxes without a court order and hearing is a direct violation of Due Process, and a civil right violation upon whom it occurs:

5th Amendment: "No person shall...be deprived of life, liberty, or property, without

due process of law."

Those involved with such an illegal sale without a legal judgment via a court hearing, with all facts being adjudicated, are parties to this criminal activity and can be held personally liable for RICO and civil rights violations. This includes parties who may purchase said property, as accomplices in said action, as ignorance of the law is no excuse.

The Supreme Court ruled that Municipalities cannot exert any acts of ownership and control over property that is not OWNED by them, see *Palazzolo v. Rhode Island* 533 US 606, 150 L.Ed. 2d 592, 121 S.Ct. ____ (2001) (no expiration date on the taking clause for City's illegal enforcement of its Codes on the man's private property and restricting the man's business), affirming both *Lucas v South Carolina Coastal Council*, 505 US 1003, 120 L.Ed. 2d 798 (1992). (butterfly activists and Code Enforcement cannot restrict development of the man's private swampland unless they lawfully acquire the land FIRST, surveying with binoculars constitutes a "takings"), and *Monterey v. Del Monte Dunes*, 526 US 687 (1999), 143 L.Ed. 2d 882 S.Ct. ____ (1998).

In the Monterey case, the California private property owner was awarded \$8 million for Code Enforcement's illegal trespass and restriction of his business, and another \$1.45 million for the aggravation of a forced sale.

Federal Law also prohibits Cities and Counties from issuing citations against businesses, see Title 18 U.S.C.891-896, quoting Section 891 "An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property."

Notice of Possible RICO Crimes

Assessor's office actions in demanding and unconstitutionally enforcing property tax code against me is in violation of my civil rights and is in violation of the Racketeering (RICO) laws, fulfilling the four requirements for a RICO crime to exist as follows:

a). Association In Fact; two people acting together (knowingly or unknowingly) which affects Interstate Commerce...

The actions in activities and enforcement clearly constitute financial fraud, which is supported by multiple layers of "associations" with the primary intent of taking assets from citizens and profiting the government. This need only be \$1.00 in loss

to fulfill this requirement.

b). Two or more similar acts of fraud, mail fraud or extortion having occurred...

The actions have been ongoing, as proven by the ongoing efforts by the Assessor's office yearly. In addition, mail fraud, a Federal Crime, is also involved with this scheme by the use of the postal system to extract finances unlawfully.

c). Money or property deprivation...

This is self evident in Assessor's office correspondence, demands, printed material, court proceedings, etc.

d). Pattern is likely to continue.

Pattern has been continuing for many decades and is growing worse. The only way it will stop is for the Rule of Law to be enforced and for constitutional rights to be enforced... In other words, oaths of office must be obeyed and not violated, creating even more criminal events in the way of treason against the American People.

See also 18 USC Sec. 241 01/19/04 TITLE 18- CRIMES AND CRIMINAL PROCEDURE - PART I - CRIMES CHAPTER 13 - CIVIL RIGHTS Sec. 2414 ***Conspiracy against rights.*** If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . . They shall be fined under this title or imprisoned not more than ten years, or both;

CORA Violation Legal Notice

Failure to respond within 30 days to this Colorado Open Records Act request, or supplying incomplete, misleading, or errant responses, is punishable under CRS 24-72-201 et seq., by a \$100.00 fine, 90 days in jail, or both, for EACH infraction. This is Evidence in Fact for any court proceedings.

If no rebuttal, point by point, is forthcoming within 30 days from the date of receipt, you will be in default and all testimony and evidence will be held as true and correct.

Payment of assessed taxes will be under duress and protest, and legal action will be taken

against you personally, and against your superiors personally for civil rights violations, and RICO violations.

Thank you for your speedy response in helping me to understand my legal and constitutional rights on this issue.

All Specific Rights are explicitly reserved, without prejudice, U.C.C. 1-207/308.

(Your name and address, and sign)

Property Legal description: _____

CC: Colorado Attorney General John Suthers - certified mail# 0000-0000-0000-0000-0000
Congressman Salazar - certified mail# 0000-0000-0000-0000-0000
Archuleta County Sheriff Pete Gonzalez- certified mail# 0000-0000-0000-0000-0000
County Commissioners - certified mail# 0000-0000-0000-0000-0000

I declare under penalty of perjury that the identified sovereign individual, (your name), appeared before me with picture identification, and acknowledged this document before me on;

Date: _____ /s/

_____ (NOTARY PUBLIC'S JURAT)

Certificate of Mailing

I, (your name), do certify that I mailed this original certified document consisting of Brief and Memorandum of Law, Affidavit of Specific Negative Averment, Actual and Constructive Notice - Brief and Memorandum of RICO (Racketeering) Crimes, to the Archuleta County Assessor's office, certified mail # 0000-0000-0000-0000-0000, and copies of original to the above named individuals, certified mail #'s listed above, all mailed on (date).

(your name typed)