

Motion to Return Property

Demand for Return of Property Unconstitutionally and otherwise unlawfully seized On or about March 29, 2017, the State of Idaho through its agents and employees who serve the Idaho State Tax Commission, stole and converted my truck and other property that was inside my truck, by trespassing on my property, seizing the truck and having it towed away from my property, all without my consent or even my advance knowledge and without giving me the opportunity to contest the validity of the basis for the State's actions.

All activities of the Tax Commission related to the seizure, taking and conversion of my truck, and related to the trespass on my property were taken in complicity with employees and agents of the Ada County Sheriff and the City of Boise and the Idaho State Police, and in concert with them as they conducted an unlawful search and seizure of my premises. I was gone at the time all these activities took place and gave no permission or consent to my property, or to remove my truck and the property within it, or to convert my truck and the property within it. On or about that 29th day of March, a group of armed men came to my home residential premises at 9941 West Granger Avenue, Boise, Idaho 83704. I was not there since I had been unlawfully arrested the day prior and was being illegally, unlawfully and unconstitutionally detained in jail as the armed men invaded my property.

A neighbor reported that a tow truck came to the premises along with a number of police cars and the armed men. The neighbor's description was that a "swat

team” had descended on my property. The fact that the tow truck that was used to haul away my truck appeared on the scene at the same time the armed men arrived shows me clearly that the Tax Commission personnel were acting in concert with those law enforcement officers who violated my rights by conducting an unlawful search and seizure. The fact that the Tax Commission personnel had their tow truck at my property at the same time as the armed invasion shows that there was a premeditated and deliberate seizure of my property; given that fact that Tax Commission personnel had such advance notice, they had time to provide me with the opportunity to refute the claim that the Commission had the right to seize and dispose of my truck.

Failure to provide me with the opportunity to refute the Commission’s basis for acting violates the due process clause of the Fourth and Fourteenth Amendments. (See summary of Supreme Court’s position on this subject and cases cited herein below)

My 2005 Dodge Dakota Truck, VIN ID7HE48N55S237600 was parked on my home premises at 9941 W. Granger Avenue, Boise Idaho 83704, and could not be reached by anyone without entry upon my private property. In my absence on or about the 29th day of March, 2017, the State, acting through the Idaho State Tax Commission and through the person of Jeff Shields whose card portrays him as Compliance Officer for the Collection Division of the Tax Commission, seized and removed the truck from my premises.

Moreover, Jeff Shields or someone acting for him and for the State, trespassed into the interior of my home and left on the refrigerator Shields business card, no doubt paid for by the State and therefore by me as a taxpayer, and a "Notice of Seizure" relating to the theft of my truck. This entry into my home was in my absence, without my consent, without my advance knowledge and without any opportunity to contest the validity of the entry and the related seizure of my truck and other property.

The property seized was the above described truck (see Notice of Seizure, Attachment 1) and the property described by Attachments 2 and 3.

The Notice of Seizure contained the language that "Pursuant to the authority contained in Idaho Code sections 63-3057 and 63-3635, and by virtue of a warrant placed in my hands for execution by the Idaho State Tax Commission, I have seized the following described property for non-payment of taxes due the State of Idaho."

Neither statute cited authorizes the State Tax Commission or anyone acting under its authority to issue or execute a "warrant" for the seizure of a person or property or for the arrest of a person. The "warrant" referred to by Shields when he signed the Notice of Seizure is the warrant attached to this demand as Attachment 4 and it refers to a warrant issued by the state as an instruction to a third party to pay out money or otherwise designated method of paying on a debt to the person holding the warrant. It is in no

way a seizure or arrest warrant as Shields and the authors of the Notice of Seizure attempt to portray.

Idaho Code Section 63-3057 does not authorize seizure of property in payment of tax accomplished through a trespass on private property, and without any due process opportunity for the taxpayer/owner of the property to contest the validity of the action. In fact, the legislature contemplates such due process procedure in the second paragraph of the Section where it details a court proceeding. The Notice of Seizure was served in my absence and the truck and its contents were taken in my absence. The trespass into my home was in my absence. No due process pre-hearing was noticed or given, thus in effect and by law my truck and its contents were purloined, and if sold were confiscated and converted unlawfully.

The United States Supreme Court has made it clear that before property, right, interest, asset or even benefit is taken from a person the person is entitled to a pre-determination process in which the person from whom property is to be taken can contest the correctness or accuracy of the action proposed by the seizing agency. See **Fuentes v. Shevin** , 407 U.S. 67 (1972); the Court has made it clear that before seizure or taking of a right, benefit, interest or property there must be some type of process by which more than just an ex parte decision to take property is involved. The cases point out that something in the nature of a probable cause process at which the owner of property can contest the accuracy must be afforded. See

Mathews v. Eldridge, 424 US. 319 (1976, **Goldberg v. Kelly** , 397 US at 266-271; **Sniadach v. Family Finance Corp**, 396 US 337, **Bell v. Burson** , 402 US at 539 , **North Georgia finishing Inc v. Di-Chem, Inc.I** , 419 US 601. **Arnett v. Kennedy**, 416 US at 134.

I was afforded no such opportunity to contest the validity of the proposed seizure. And in fact, I had information with which to make such contest. I filed a 1040 X form with the State Tax Commission over a year before my truck was unlawfully taken from my premises, a form showing how I was entitled to a refund of several thousand dollars because of prior overpayment of tax. No response was ever made to that document; and without any explanation the Tax Commission sent a determination that I owed additional money in taxes instead of being entitled to a refund of overtaxes paid. I have proof that I owe nothing to the State Tax Commission and could have produced that if I had been afforded the pre seizure process to which I am entitled under the due process clause of the Fifth and fourteenth amendments to the United States Constitution.

I filed a Notice of Tort Claim with the Secretary of State of Idaho in April, 2017, regarding the seizure/theft of my truck, and a copy of that Notice is attached hereto as Attachment 4; a copy of the Notice went to the Idaho State Tax Commission, attention Jeff Shields when I filed the original with the Secretary of State.

With the filing of the Notice of Tort Claim, I preserved my right to sue the State, the Tax Commission and Jeff Shields in tort in their official capacities.

Of course, in addition, I have the option of suing with a Title 42, Section 1983 civil rights action.

Upon delivery of this Demand and Request to you, I hereby formally demand that you release to me and deliver back to my property at 9941 w. Granger Avenue in Boise, Idaho 83704, my truck described hereinabove and all the property identified in Attachments 2 and 3.

Failure to release and deliver said property within 72 hours of delivery of this document to your offices will be considered by me a formal conversion and theft of said property and I will proceed accordingly against the State, the Tax Commission and Mr. Shields both officially and personally, as well as other individuals from Ada County, Boise city and any tow truck personnel government or otherwise, who participated in the removal of my property or who assisted that action in any way including mere security assistance. This Demand and Request will also serve as a Notice of Intent to Sue under the State Tort Claims Act, and/or the federal civil rights act, 42 USC 1983, and notice of intent to take other remedial actions appropriate to a conversion of property or rights. Signed this _____ day of January, 2018

Robert Coy

CERTIFICATION OF DELIVERY BY HAND TO THE IDAHO STATE TAX

COMMISSION AND TO JEFF SHIELDS BY DELIVERING
THE DOCUMENT AND
ATTACHMENTS TO AN EMPLOYEE OR AGENT OF THE
STATE TAX

COMMISSION AT 800 PARK BLVD. PLAZA IV, BOISE
IDAHO 83712 ON THE
DATE OF _____.

I ALSO PLACED A COPY OF THIS DOCUMENT AND
ATTACHMENTS IN THE
UNITED STATES POSTAL SERVICE FOR DELIVERY TO
IDAHO STATE TAX

COMMISSION, COLLECTION DIVISION, PO BOX 36,
BOISE IDAHO

83622-0410 AND TO JEFF SHEILDS AT THE SAME
ADDRESS ON THE SAME
DATE _____.

Signed this _____ day of January, 2018

Robert Coy

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