Janice Sue Taylor
3341 Arianna Court
Gilbert, Arizona

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,	) Case No. 10-00400-PHX-MHM
Alleged PLAINTIFF,	)
	) MOTION TO DISMISS INDICTMENT
	) 26 USC Counts 1-4, 7201, 26 USC Counts 5-8, 7203
	) for lack of *in personam* jurisdiction,
vs.	) FRcvP 12 (b)(2)
	) essential elements;
	) Operation of 26 USC § 83 as herein briefed.
Janice Sue Taylor,	)
Alleged Defendant.	) MEMORANDUM IN SUPPORT

I. INTRODUCTION.

1.1 COMES NOW, Alleged Defendant above named, seeking specific relief in the form of dismissal of Counts 1, 2, 3, 4, 5, 6, 7, and 8 of the indictment in this case, which point to Alleged Defendant's compensation as gross income. As is the case in relation to many other statutory arguments of which this Court is now aware, the argument made herein is one with perhaps the longest string of controversy behind it as it concerns the wall between Americans and their law upon which the Alleged Plaintiff relies in every tax case wherein these arguments are encountered; Alleged Plaintiff will fail.

1.2 This issue is as strictly founded upon statutory language and interpretation as one can find in any other case. The way such language is applied to fact by the Alleged Plaintiff is diametrically opposed to the Alleged Plaintiff's arguments in four U.S. S.Ct. victories where it argued precisely as will the Alleged Defendant but in relation to a tax statute; "any" means everything. ***Any and all emphasis*** employed herein may be construed to have been added.

1.3 Alleged Defendant's memorandum on her 26 USC § 83 claim is found at her Offer of Proof filed February 24, 2010 (hereinafter "Memorandum Exhibit 5") which is an 18 USC § 4 complaint to which she is a similarly situated complainant by virtue of her affidavit of Joinder filed thereunder. (See **Memo** Exhibit 5, of Joinder filed w/Congress February 24, 2010).

Inside **Memo** Exhibit 5 is a 13 pg. Brief which states Alleged Defendant's **26 USC § 83 claim**. This claim was filed with the Prosecutor on March 30, 2010 to relate to the Grand Jury before the indictment of Alleged Defendant. Prosecutor has never addressed this claim other than to say the Grand Jury did not want to see it. It is highly doubted Prosecutor has ever read it. Alleged Defendant is demanding he read and answer all the questions herein. Authorities cited therein relevant to due process and to applicable provisions of 26 USC, as well as the statement of the § 83 claim, are incorporated by this reference as if fully restated herein. Alleged Defendant will revisit in short the claim stated in said 26 USC §83 Brief, demanding Prosecutors answer the questions 47-48 on the last page of Exhibit D, in the complaint Joinder to Congress, Exhibit 5, or it will be deemed that Alleged Defendants claims are all true facts herein, and this case will be dismissed with prejudice immediately.

II. ISSUE: ALLEGED DEFENDANT HAS BEEN DEPRIVED OF THE PROVISIONS of 26 USC §§ 83, 212, 1001, 1011, and 1012.

2.1 The amounts Alleged Plaintiff claims are gross income in Counts 1, 2, 3, 4, 5, 6, 7, and 8 of the indictment are property received in exchange for services. "Section 83(a) explains how property received in exchange for services is taxed." [1] Section 83 applies to all compensation paid for services of corporations, and for the services of individuals. [2] Labor is Property. [3]

2.2 With plain language § 83(a) requires that, when compensation is received in [exchange] for services, from the FMV of the compensation, the excess over the "amount paid" (cost) is to be included in gross income.

> § 83 "Property Transferred in Connection with the Performance of Services.
> (a) If, in connection with the performance of services, property is transferred..., ***the excess of-***
> (1) the fair market value of such property...***over***,
> (2) ***the amount (if any) paid*** for such property . . . shall be included in the gross income of the person who performed such services . . ."

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[1] See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).
[2] See 26 CFR 1.83-3(e), (f); *MacNaughton v. C.I.R.*, 888 F.2d 418 (CA6 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (CA5 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); *Robinson v. C.I.R.*, 82 USTC 444 (1984); *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).
[3] See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's*, 6th, "property."

2.3 To figure one's cost ("amount paid"), one proceeds to 26 CFR 1.83-3(g) which says that the term "amount paid" in § 83 refers to the value (the FMV/contract value) of any property paid (labor) for the compensation.

> 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term "amount paid" refers to ***the value of any money or property paid*** for the transfer of property to which § 83 applies.

2.4 The sole grounds for adverse disposition of this claim has been that concerning prior existing basis in the property disposed of to receive compensation to which § 83 applies. In prior decisions, this claim was discounted under the reasoning that, because one has no basis in their labor, because one's personal services were not purchased first before being sold to an employer or customer/client by the employee or self employed individual, because of this the labor or personal services could not be deemed a cost because it/they are property within which the seller has no basis or *cost*. Labor has been excluded from cost solely because it is property within which the laborer has no cost. (See in the nature of *Talmadge* decision excerpt, U.S.T.C. #339-95 (1996)).

2.5 As used in statute and regulation, the terms "any" or "any property" are to be construed as all inclusive until express statutory exceptions can be cited to support a contention that such terms are not all inclusive. (See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (**1989**); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (**1994**); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (**1997**); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (**2002**) citing *Gonzalez* and *Monsanto*).

> **1989** - *Monsanto* - Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize any and all property unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant.
>
> **1994** - *Alvarez* - U.S. argues successfully that, **because statute expressly provides for an exception to "any,"** that it is not all inclusive, that a "delay" should not preclude a criminal defendant's confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant.

1997 - *Gonzales* - U.S. argues successfully that "**any**" in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, argues for more jail time and gets it. More jail time for convict.

2002 - *Rucker* (citing *Monsanto* and *Gonzales*) - U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is scene of prohibited behavior.

See *Talmage v. Comm'r of IRS*, #339-95, Stephen Talmage was penalized $6500.00 for offering to concede all facts in exchange for "how to comply with § 83". U.S.T.C. Order and Decision, 3/11/96, pg.8, 19, 20. **Begin here** with Tax Court's assessment of the § 83 claim:

"Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence of better argument) to justify summary judgment for the respondent. (protester cite omitted). Even if wages are, in effect, an exchange of value for equal value, they are nevertheless taxable income. (protester cite omitted) And even if we apply section 1001, his basis is determined under sections 1011 and 1012 as his cost, not fair market value. ***Since he paid nothing for his labor, his cost and thus his basis are zero***. (protester cite omitted) Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, *i.e.*, his wages.

"Petitioner's primary argument is that section 83, Property Transferred in Connection with the Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, thereby exempting them from tax. Section 83 provides that property received for services is taxable to the recipient of the property to the extent of its fair market value minus the amount (if any) paid for the property. In attempting to equate his wages with property for which he has a tax cost, petitioner's argument is nothing more than a variation of the wages-are-not-income claim frequently advanced by tax protesters, and it is completely without merit. (protester cites omitted) Petitioner's argument fails for the same reason that other protester's arguments fail; ***the worker's cost for his services-and thus his basis-is zero, not their fair market value***."

***End quote** from *Talmage*.

2.6 **No,** the Alleged Defendant asserts that "any money or property" includes her personal services because no law allows for such to be excluded from that phrase or term. **No,**

the Alleged Defendant claims no *exemption*, but rather claims the "excluded by law" exclusion from gross income found in 26 USC § 61(a), *ala*, "unless excluded by law."

> "We agree with the analysis in *Voorhies* -- a formal tax assessment that has become administratively final is prima facie evidence of the asserted tax deficiency, ***and if unchallenged***, it *may* suffice to prove this element of the crime. ***But the assessment is only prima facie proof of a deficiency. The assessed deficiency may be challenged by the defendant accused of tax evasion, and the issue is one for the jury***. As the Supreme Court said in *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-73 (1977), the jury's -
>
> > overriding responsibility is to stand between the accused and a potentially arbitrary or abusive government that is in command of the criminal sanction. ***For this reason, a trial judge is prohibited from entering a judgment of conviction or directing a jury to come forward with such a verdict, regardless of how overwhelmingly the evidence may point in that direction***.
>
> (Citations omitted.) This conclusion is consistent with *United States v. England*, where the government conceded that ***proof of a valid assessment was essential to its evasion case, and the court held it was error to instruct the jury the assessment was valid as a matter of law***. 347 F.2d at 430. *England* was followed in *United States v. Goetz*, 746 F.2d 705, 708-10 (11th Cir. 1984). ***Our conclusion is also consistent with decisions that the taxpayer may defend a charge of willfully evading the assessment of taxes by proving there was no tax due and owing***, for example, ***by evidence of unclaimed deductions and expenses***. See in the nature of, *e.g.*, *Clark v. United States*, 211 F.2d 100, 103 (8th Cir. 1954); see also *Sansone*, 380 U.S. at 354 (the crime of tax evasion is complete when a false return is filed "***assuming, of course, that there was in fact a deficiency***").
>
> We find further support for this conclusion in the Supreme Court's cases dealing with the validity of presumptions in criminal cases. The government argues, in effect, that the alleged tax deficiency may be conclusively presumed from an administratively final assessment. ***But conclusive presumptions are invalid in criminal cases because they "conflict with the overriding presump tion of innocence with which the law endows the accused and which extends to every element of the crime, and would invade the factfinding function which in a criminal case the law assigns solely to the jury***." *Sandstrom v. Montana*, 442 U.S. 510, 523 (1979) (quotations omitted). The court's approach in *Voorhies*, on the other hand, creates in effect only a permissive presumption, one that "merely allows an inference to be drawn and is constitutional so long as the inference would not be irrational." *Yates v. Evatt*, 500 U.S. 391, 402 n.7 (1991). It is rational to infer that an assessment which the taxpayer chose not to contest is prima facie evidence of the asserted deficiency. ***But it is not rational to make the assessment conclusive proof of the deficiency***, particularly because in the absence of a tax return an assessment is based upon a "substitute" return prepared by the IRS without the benefit of factual input from the taxpayer.

> ***For the foregoing reasons, we conclude that <u>one accused of tax evasion must have the opportunity to prove</u>, however unlikely the proposition may be, that an administratively final tax assessment <u>does not accurately reflect the existence of a tax deficiency</u>.*** Therefore, ***Silkman is entitled at trial to introduce evidence relevant to whether there was in fact a tax deficiency in one or more of the tax years in question.***" See in the nature of, *U.S. v. Elton Silkman*, 156 F.3d 833 (CA8 1998).

2.7 Alleged Defendant has proven that no tax is owing on her compensation's for the fact that they are paid directly in recognition of services actually performed, and are so paid as a matter of original employment contract terms, placing them squarely within the arm's length transaction *fair market value* identified in 26 CFR 1.83-3(g) as an "amount paid," *a fortiori*, separating such receipts from gross income as a matter of law, leaving no § 61(a) gross income to report, and no § 63 taxable income to tax. For as long as the <u>due</u> exclusion of the value of Alleged Defendant's personal services from "any money or property" remains without disclosure, for as long as such exclusion remains clearly an arbitrary standard, all further proceedings on Counts challenged herewith constitute a violation of due process for the fact that four S.Ct. decisions won by the Alleged Plaintiff are set aside in bold defiance of the standard of interpretation established thereby. Consider that "[s]ection 83(a) explains how property received in exchange for services is taxed." [4]

> "Petitioners rest their entire case on the proposition that Elovich and Cohn and/or Mega were "independent contractors" and not employees of the Integrated and that, therefore, section 83 does not apply to the acquisition of the shares from Integrated. They rely on the legislative history surrounding the statute to support their proposition that section 83 was intended to apply only to restricted stock transferred to employees. ***Respondent contends that the words "any person" in section 83(a) encompass independent contractors as well as employees***. I agree with Respondent. . . . I reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, ***the language of the section covers the transfer of any property transferred in connection with the performance of services*** "to any person other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that Congress was aware that the statute's ***coverage extended beyond restricted stock plans for employees***. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. The regulations state that that section 83 applies to employees and independent contractors (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances, ***these regulations are not "unreasonably and***

[4] See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).

> ***plainly inconsistent with the revenue statutes." Consequently, they are sustained.*** (cites omitted)"

See *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).

2.8 IRS accountant and agent, Sue Besson, has worked for the IRS for 21 years and claims to have conducted approximately 500 examinations of individual 'taxpayers' over that time as a person responsible for "determining" tax liabilities under tax law and deciding which ones to recommend for prosecution and which ones to merely forward to an IRS officer for collection; that's the difference between and agent and an officer. On **August 9, 2007**, in U.S. District Court, Seattle Division, Ms. Besson was asked by counsel Allen Ritchie, "What role did § 83 play in your determination that the defendant had a tax liability on his compensation?" To which Ms. Besson replied, "I am unfamiliar with § 83." (See *United States v. Ray Gebauer*, #CR06-122JLR, see transcript of **8/9/07** at 9:55 a.m. in § 7201 tax evasion trial). From a private individual's perspective this standard of due process is a spectacle of tyranny.

III. CONCLUSION & RELIEF.

3.2 Alleged Defendant hereby charges that Alleged Plaintiff's ongoing failure to prove that its having excluded the value of Alleged Defendant's personal services from "the value of any money or property paid" was not an arbitrary exclusion constitutes a failure to complete the Court, *a fortiori*, it constitutes a jurisdictional bar to further proceedings under the Fifth Amendment to the Constitution for the United States of America, as it relates to counts challenged herein, and proves that the Alleged Plaintiff cannot satisfy a jury as to the existence of a tax liability, an element essential to a finding of guilt.

> **"Under Issue D" (Exhibit D)**:
> Under law, to tax the FMV of services actually rendered, the Alleged Defendant must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-3(g)) embraces the FMV of labor as a cost ("***value of any money or property paid***"), despite the fact that it is property within which the Alleged Defendant has no basis. Property within which one has no basis is not excluded from cost under the law.
>
> Alleged Plaintiff excludes from cost Alleged Defendant's services merely upon the fact that it is property within which Alleged Defendant has no basis, but such an exclusion is unauthorized under provisions which embrace ALL property as a cost. Alleged Defendant must violate §§ 83, 212, 1001, 1011, and 1012 by not restoring the "adjusted basis" and allowing only the amount that remains thereafter to be taxed as

value of personal services the Alleged Defendant must enter a false statement on a government form in violation of 18 USC § 1001.

Questions under Issue "D" (Exhibit D):

(QD)1. Since § 83 is applicable to amounts now sought to be included in gross income, it is clear that either the Alleged Plaintiff or the Alleged Defendant is in violation of it, but silence abounds. Does it apply, and, if so, how does it operate and how is the Alleged Defendant to comply with it in the future?

(QD)2. Where, under §§ 83 and 1012, and 26 CFR 1.83-3(g), does it provide that only property within which one has a basis is to be recognized as a cost or, that intangible personal property is excluded from that which is cost?

(QD)3. If such exclusions alluded to in #(2) above do not exist, can "income tax" approach such property's FMV, as contemplated under §83?

(QD)4. In consideration of these provisions, is the FMV of labor (contract value) appropriately termed "gain derived from labor"?

(QD)5. Is the FMV of labor excluded from gross income by law? (See § 83, 212, 1001, 1012; 26 CFR 1.83-3(g)). If so, by what authority?

(QD)6. Can a Court order the exclusion from cost of property within which the Alleged Defendant has no basis when such exception to cost cannot be found in statute or in regulation, especially when it constitutes the difference between paying a tax and not even being subject to it? Can the Alleged Plaintiff claim in one case that "any property" means <u>all</u> property, and in another case argue that "any property" lawfully excludes certain things not recorded, mentioned, or manifest in law? Would such accounting offend the holdings in *Monsanto*, *Gonzales*, *Alvarez*, and *Rucker*? If not, why not?"

3.3 Alleged Defendant has received no gross income as alleged, she has evaded no tax, and she's falsified no government forms of any nature. Alleged Plaintiff's burden is framed in the questions for review above and at conclusion of USC 26 § 83 (and 26 USC §§ 212, 1001, 1011, and 1012) argument in Alleged Defendant's memorandum. (See Exhibit D in Exhibit 5, of Memorandum). Until such time as when Alleged Plaintiff proves that these laws have operated in the allegations that Alleged Defendant had such purported duties, due process requires dismissal with prejudice of the counts challenged herein.

Dated: 10-4-2010

Respectfully submitted:

Janice Sue Taylor, sui juris
U.S.C. 28 §1746 (1) Without the United States

Janice Sue Taylor
3341 Arianna Court
Gilbert, Arizona

Certificate of Service

I, Janice Sue Taylor, hereby declare and state that I have filed a true and correct copy of the above document Motion to Dismiss essential elements 26 USC §83. Said Right Extended To Any Attorney, Whether Or Not At Bar, If Providing Or Proposing To Provide "Assistance – Not Force – Of Counsel" with the Clerk of the Court for the [Alleged] United States District Court For The [Alleged] District Of Arizona, said [Alleged] Court Appearing And Existing [Supposedly] As A Possession Of Its Own And NOT Lawfully Existing In The Legal or Organic County of Maricopa, Legal or Organic [Proposed] State of Arizona, and have mailed a copy hereof, postage prepaid thereon, to the Alleged U.S. Attorney's Office at the following addresses set forth below.

Frank T. Galati,
James Richard Knapp,
Office of the Alleged U.S. Attorney
40 N. Central Ave. # 1200
Phoenix, Arizona near 85004

Susan Anderson
850 W. Adams Street, Suite 201
Phoenix, Arizona near 85007

RESPONSE TO THIS EXHIBITED NOTICE IS REQUIRED - *Qui Tacit, Consentire Videtur, Ubi Tractatur De Ejus Commodo* **(He[She] who is silent is considered as assenting** [*to the matter in question*] **when his[/her] interest is as stake.)**

Dated this 7TH day of October, 2010 A.D

Janice Sue Taylor, sui juris
Pursuant to U.S.C. 28 §1746 (1)
Without the United States,

MEMORANDUM

"EXHIBIT 5"

I, Ronald J. McBride, do hereby declare that on February 24, 2010, I did deposit the attached document (**Janice Sue Taylor**'s Joinder of similarly situated parties to the above captioned 18 USC § 4 Complaint) in U.S. Post 1st Class and in adequate packaging addressed to the following Congressional committees and members at the addresses below and as instructed by postal protocol personnel: ***U.S. House of Representatives:** House Postal Operations, 9140 East Hampton Drive, Capital Heights, MD 20743, and to **U.S. Senate** Post Office, MAIL ROOM SH - B21, Washington, D.C. 20510-7220, for distribution to the designated locations below.

*** Committee on Judiciary**
Hon. John Conyers, Jr.
2138 Rayburn House Office Bldg.
Washington, DC 20515

*** Comm. Gov't Reform**/Hon. Edolphus Towns
U.S. House of Representatives
2232 Rayburn House Office Building
Washington, D.C. 20515

*** Hon. Ron Paul**
203 Cannon House Office Bldg.
Washington, DC 20515

****Joint Committee on Taxation**
Hon. Max Baucus, Senate
1015 Longworth House Office Building
Washington, DC 20515

Date: February 24, 2010 Signed:_____

TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

No. [FILE NUMBER - Please advise]

David R. Myrland, Tim Garrison, Lee J. Herold, Jim L. Walden, Greg Weiss, Paul Broward, and We the People,
Complainants,

vs.

UNITED STATES DEPARTMENT OF JUSTICE, ALBERT GONZALES, UNITED STATES TREASURY DEPARTMENT, JOHN W. SNOW, INTERNAL REVENUE SERVICE, MARK W. EVERSON, U.S. DISTRICT COURT, GARR M. KING, LEE YEAKEL, ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, TERRY L. MARTIN, U.S. TAX COURT, JOEL BERGER, NORTHWEST AIRLINES, and all those similarly situated or so involved,
DEFENDANTS.

VERIFIED JOINDER OF PARTIES TO COMPLAINT
- Janice Sue Taylor hereby joins -

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*Joinder of similarly situated parties as Co-Complainant.

Dated: February 24, 2010. Please provide file or complaint number for future reference. **Deemed filed with Joint Committee on Taxation, Committee on Government Reform, and House Judiciary Committee**.

"EXHIBIT 5"

I. INTRODUCTION.

1.1 I, Janice Sue Taylor, one of the People of Arizona, do hereby incorporate the above captioned 18 USC § 4 complaint (*David R. Myrland, et al. v. U.S. Department of Justice, et al.*, Complainants, certificate of service dated 12/28/05) by this reference as if fully restated herein, I hereby join it as a Co-Complainant, and I hereby authorize this verified Joinder to be distributed to Congress as such. I do not intend herewith to obstruct any lawful enforcement of any laws, state or federal, and I see no harm or obstruction posed by my reporting crime as I do with this 18 USC § 4 complaint.

1.2 The attached documents hereby sworn to are authentic and prove that I am similarly situated to Complainants in relation to several crimes alleged in the subject Complaint. I have too much respect for the law than to remain silent and I view this Joinder as our legal duty under 18 U.S.C. § 4. Pursuant to 26 U.S.C §7806[1]. I don't believe I have a duty to file a tax return or to pay an income tax under 26 U.S.C., or that I am "willful" regarding any of its penal provisions, civil or criminal. The term *as briefed* shall refer to the supporting memorandum filed with the above captioned complaint. ***Any and all emphasis*** employed herein may be construed to have been added.

1.3 I hereby demand that this entire file be deemed a part of my official administrative record for the purposes of any and all future controversies or other matters involving the Defendants in any way. My contact information is attached but is intended for suppression and preclusion from public record regarding this action. Please advise of all developments, *e.g.*, official complaint or file number for the 18 U.S.C. § 4 overture joined hereby. Hereinafter I may be referred to as the "Complainant." **Exhibits to this verified joinder** are as follows:

> **Exhibit A**: Five Notice of [2]Federal Tax Lien's, SERIAL NUMBERS 860273611, 112336203, 202356904, 271241606 and 355869707 proving involvement on the part of the Co- Defendant's hereto.

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[1] Title 26 §7806 (b): No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law. *Emphasis mine*

[2] **No "IRS agent" may file a lien, nor has he the authorization.** This evidence is found on page 4760e at 70.11 USC, meaning of terms. Only BATF officers from the Chief, Tax Processing Center are authorized to file liens and their signatures must be on the Notice of Lien, Sale, Seizure and so forth i.e. Federal Register sections, but not limited to, 70.34, 70.42, 70.64, 70.71, 70.144c, 70.150, 70.161, 70.165, 70.182, 70.204, 70.211, 70.231, 70.232, 70.242 and continuing to the end at 70.487. Further evidence is on page 47633 at 70.191, wherein it states that no action of any kind will take place without the authorization of the Director Bureau of ATF or the Chief Counsel for

"EXHIBIT 5"

Exhibit B: Complainant's Notice of Levy[3], proving involvement on the part of the Co-Defendant's to name me subject and liable when Congress has failed to do so, hereto.

Exhibit C: Brief on 4 USC §72, 15 pages, Public offices; at seat of Government, proving involvement on the part of the **ALL** of the named Co-Defendant's hereto.

Exhibit D: Brief on 26 USC §83 Property transferred in connection with performance of services. Proving involvement on the part of the named Co-Defendant's hereto

Exhibit E: Summons on Complainant. Proving involvement on the part of the Co-Defendant's to name me subject and liable when Congress has failed to do so, hereto.

1.4 The fact that the U.S. Dept. of Justice cannot refute the above captioned complaint and its briefing of statutory scheme, its limitations of scope, and its many protections and limitations of power, is firmly established by clear refusal to even speak for one moment in contradiction about the operation of provisions relied upon. All or most of the original charges or counts alleged must therefore be valid accusations, and I hereby complain in kind in relation to persons now acting against me under color of law.

II. JOINDER OF SIMILARLY SITUATED PARTIES CO-DEFENDANTS.

2.1 The documents attached hereto and incorporated herein as Exhibit A, B, C and D, emanate from taxing and/or government authorities who are similarly situated to persons named in the original above captioned complaint. The Co-Defendants who all have taken and sworn an oath to uphold, support, protect and defend the Constitution for the United States of America, who names and addresses are as follows:

2.2 **SUSAN R. BOLTON** is a Judge for U.S.D.C. Phoenix, Arizona whose address is 401 W. Washington Street, Phoenix, Arizona [85003].

AMY TALBURT MATCHISON is an Assistant U.S. Attorney for U.S. Department of Justice whose address is P.O. Box 683, Ben Franklin Station, Washington DC [20044].

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the BATF. Nowhere in the law or in the code are IRS agents given authorization to initiate or participate in a Lien/Levy process;
The above named IRS agents are using a **discontinued Form** of a Notice of Lien in violation of promulgated regulations. (c) Specifically states that, "The notice referred to in Section 70.145 of this part SHALL be filed on **ATF Form 5651.2** "Notice of federal Tax Lien under Internal revenue Laws..." The Notice is also referenced in section 70.205 USC

[3] **26 USC § 6331.** Levy and distraint (a) Authority of Secretary - **"If any person liable... Levy may be made upon the accrued salary or wages of any *officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia*,** by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official..."

"EXHIBIT 5"

ABE REYES i who is duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico as found 27 CFR § 26.11, ID# 31-01-1294 whose address is known to be 210 E. Earll Drive Phoenix, AZ 85012, M/S 5023PX

JERRY YOUNG who is duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico as found 27 CFR § 26.11, ID# 86-17537 whose address is unknown.

JERRY CARTER/YOUNG who is duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico as found 27 CFR § 26.11, ID# 86-16385, whose address is 1818E. Southern Ave, MS 5102, Mesa, Arizona [85204]

LON R. LEAVITT is an Assistant U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

FRANK T. GALATI is an Assistant U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

JANET MARIE WALSH is an Assistant U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

DENNIS K. BURKE is an U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

PAUL K. CHARLTON is an U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

DANIEL G. KNAUSS is an U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

DIANE J. HUMETEWA is an U.S. Attorney for the District of Arizona whose address is 40 N. Central Ave #1200, Phoenix, Arizona [85004]

KNOWN AND UNKNOWN AGENTS OF THE INTERNAL REVENUE whose address is 1818 E. Southern Ave, MS 5102, Mesa, Arizona [85204]

III. EXISTING CLAIMS BY U.S. GOV'T ABOUT BRIEFED ISSUES.

1. Claim: "Americans are not in the statutory definition of the term "citizen" in 26 USC §§ 1402(b), 3121(e) or 3306(j), or 42 USC § 411(b)(2), but rather are named as a subject to the Internal Revenue Code only by regulation 26 CFR 1.1-1. And the Secretary of Treasury lacks the authority to operate outside of D.C. required by 4 USC § 72."

3.1 In Dec. of 2007 to Jan. of 2008, in *U.S. v. Arant*, the DOJ was faced with Issues A and B of this complaint (original filing, pp.17-23 of 58 of supporting memorandum) and failed miserably to mention the provisions relied upon. The entirety of that decision of 2/5/08 is this:

> "This matter comes before the court on defendant Robert Arant to dismiss for failure to state a claim upon which relief may be granted. Arant, who is proceeding *pro se*, argues that the United States of America (the "United States") has no statutory authority to act against him. ("The Secretary of the Treasury has imposed a tax on the

"EXHIBIT 5"

defendant through 26 CFR 1.1-1(c), but has done so with out authority to do so, the authority to lay income tax having been reserved to Congress and Congress alone"). (Fn.1).

However, "[t]he IRS is given the authority to assess taxes." *Law Offices of Jonathan A. Stein v. Cadle Co.*, 250 F.3d 716, 720 (CA9 2001) (citing 26 USC §§ 6201-6204); see also *McLaughlin v. IRS*, 832 F.2d 986, 986-87 (CA7 1987) (per curiam) ("Tax protestors, those who persist in pressing losing arguments in an attempt to challenge the legitimacy of the federal income tax, are thorns in the side of the federal judiciary"; see generally *United States v. Fior D'Italia*, 536 US 238 (2002) (discussing the IRS' authority). Arant may not agree with that authority, but nevertheless, it exists."

Fn.1: The government has responded to the motion with a single sentence, noting that the motion "is a frivolous pleading to which no further response from the United States is required." In the future, the government should look beyond the frivolous nature of Arant's filings and respond substantively."

See *U.S. v. Arant*, U.S. Dist. Court, Seattle, WA #CV-07-509-RSL, Order of 2/5/08. This was Chief Judge, Robert S. Lasnik, agreeing with the DOJ which, in response to the same Issues A and B now in Mr. Arant's motion to dismiss, could say only, "[F]rivolous pleading to which no further response from the United States is required." We see no discussion of the law.

3.2 Provisions relied upon are clearly off limits in this, a *nation of laws*, when American judges have their way. This is all that the DOJ can say about this:

"COMES NOW plaintiff United States of America in response to "DEFENDANT'S MOTION TO DISMISS counts 1 through 6 of indictment for lack of in personam jurisdiction, essential elements, other" filed at Docket No. 85.

The motion appears to challenge the government's statutory authority to prosecute him for a criminal violation of the Internal Revenue Code. He appears to base this challenge on discredited arguments that the tax laws only apply to nonresident aliens, citizens of Puerto Rico, the District of Columbia, or government employees. Alternatively, the argument is made that the taxpayer is in fact a nonresident alien to whom the laws of the United States somehow do not apply.

This is the argument that resulted in the 1997 false claim charges against Warner, who asserted he was a nonresident alien and demanded refunds. Courts have ruled that the non-resident alien arguments put forth by individuals born in the United States are frivolous. See *United States v. Ambort*, 405 F.3d 1109, 1114 (10th Cir. 2005)(noting that "Ambort does not, and cannot, argue that he has a good faith belief that he is a nonresident alien not subject to taxation. We have specifically said as much, and Ambort concedes that his argument has been repeatedly rejected"); *United States v. Hanson*, 2 F.3d 942, 945 (9th Cir. 1993)(rejecting appellant's contention "that as a natural born citizen of Montana he is a nonresident alien and, thus, is not . . . subject to the tax laws").

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The defendant's argument that there is no statutory authority to act against him seems to be based on a misinterpretation of 26 U.S.C. § 3121(e)(2), which states in part: "The term 'United States' when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa." His claim directly contradicts the Fourteenth Amendment, which states "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

The defendant's argument has been consistently rejected by the courts. See *United States v. Cooper*, 170 F.3d 691, 691(7th Cir. 1999) ("These arguments, frivolous when first made, have been rejected in countless cases. They are no longer merely frivolous; they are frivolous squared"); *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994)(rejecting "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws); *United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993)(rejecting "shop worn" argument that defendant is a citizen of the "Indiana State Republic" and therefore "an alien beyond the jurisdictional reach of the federal courts"); United States v. Gerads, 999 F.2d 1255, 1256-57 (8th Cir. 1993) (imposed $1,500 sanction for frivolous appeal that included the argument that defendants were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation"); *United States v. Silevan*, 985 F.2d 962, 970 (8th Cir. 1993) (rejected as "plainly frivolous" defendant's argument that he was not a "federal citizen"); *United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992) (rejected as "imaginative" argument that defendant could not be punished under the tax laws of the United States because he was a citizen of the "Republic" of Idaho, claiming "asylum" in the "Republic" of Colorado); *United States v. Masat*, 948 F.2d 923, 934 (5th Cir. 1991)(rejecting as frivolous argument that court lacked personal jurisdiction over defendant who claimed "non-citizen," "non-resident," "freeman" status); *United States v. Sloan*, 939 F.2d 499, 500-01 (7th Cir. 1991)(rejecting "strange argument" that defendant is not subject to jurisdiction of the laws of the United States because "he is a freeborn, natural individual, a citizen of the State of Indiana, and a 'master'-not 'servant'-of his government"); *United States v. Koliboski*, 732 F.2d 1328 (7th Cir. 1984)(describing jurisdiction challenge as "silly").

Likewise, Warner's claim that 26 U.S.C. § 3401 means that only government employees are subject to taxation has been discredited. See *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985)(describing such claim as "inane" and "a preposterous reading of the statute"); *Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986)(characterizing claim as "meritless" and imposing sanctions for frivolous appeal).

Warner states no cognizable grounds for the dismissal of the charges against him. The remainder of his "motion" essentially accused the United States of engaging in a "RICO scheme" against him, and suggests the Court will be "utterly foolish and corrupt" if it does not rule in his favor. The motion should be denied.

RESPECTFULLY SUBMITTED this 12th day of December, 2008, in Anchorage, Alaska."

See *U.S. v. Warner*, #3:07-cr-00123-RRB-JDR, Anchorage, AK, Plaintiff opposition to Issues A and B of the above captioned complaint's memorandum at pp.17-23, filed in Alaska on

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December 12, 2008. Thomas Bradley, Nelson P. Cohen, and Randall Crandon are U.S. Attorneys for prosecution. We see no discussion of the law. The claim is:

"**Under Issue (A):**

4.9 Because executive branch officials have no legislative authority, their regulations cannot add to or detract from those enactments of Congress, our lawmakers. While Congress has taken the time to name a subject of taxes imposed by chapters other than chapter 1, it has failed to identify the Petitioner, in any chapter, as a subject of any tax imposed by 26 USC.

4.10 Petitioner has a right to know how the law operates to impose the Respondent's tax, the Respondent has the burden of proof under the weight of Petitioner's evidence, and Petitioner prevails when plain discussion about the provisions relied upon cannot be obtained. Nothing in 26 USC even remotely implicates the Petitioner (private sector employee, self employed, capital gains) as the subject of any tax imposed thereunder.

4.11 The mention of Petitioner's Citizenship in mere regulation is a grossly insufficient basis upon which to tax the Petitioner. The Secretary of the Treasury has imposed a tax on the Petitioner through 26 CFR 1.1-1(c), but has done so without authority to do so, the authority to lay income tax having been reserved to Congress and Congress alone. Said regulation is null and void for derogation of statute. This is Petitioner's belief, and until it is dispelled with open discussion and logical application to the contrary Petitioner will continue to act upon it.

Questions under Issue (A):

(QA)1. By what statutory authority does the Respondent seek to tax the Petitioner? Can Respondent point to authorities naming as subject one with the political status and *situs* of the Petitioner?

(QA)2. Is the citizen in §§ 1402(b) and 3121(e) really the same Citizen defined in 26 CFR 1.1-1(c)?

(QA)3. Is the Petitioner rightfully deemed to be the employee in § 3401(c)?

(QA)4. Can the Secretary of the Treasury lay an income tax by naming a subject to the chapter one income tax where Congress has not?

(QA)5. Until Congress names the Petitioner as subject, the Respondent is powerless to even approach the Petitioner regarding any matter governed by 26 USC for lack of personam jurisdiction and statutory authority, right?"

"**Under Issue (B):**

4.17 Congress requires that the Office of the Secretary of the Treasury receive statutory leave to operate outside Washington, D.C., the seat of government of the United States. If the Secretary of the Treasury (hereinafter "Secretary") has such permission, Petitioner demands that it be disclosed, in plain language, and that the statute granting such leave be cogently ruled upon.

4.18 The Internal Revenue Code is not enforceable against the Petitioner for the Secretary's lack of the requisite leave to operate under 4 USC § 72.

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4.19 The Secretary and his delegates, *i.e.*, Commissioner of Internal Revenue, have no authority to operate outside Washington, D.C., as required under 4 USC § 72. No such authority is found in the language of 26 USC § 7621 which only applies to the Office of the President of the United States and "revenue districts." This is Petitioner's belief, and until it is dispelled with open discussion and logical application to the contrary Petitioner will continue to act upon it.

Questions under Issue (B):

(QB)1. Is the Office of the President the same Office as that held by the Secretary? If not, can § 7621 be said to be grant of leave to the Secretary to operate outside of Washington, D.C.?

(QB)2. Where is the Secretary of the Treasury's authority to operate outside of Washington D.C.?

(QB)3. Is 26 USC § 7621 a grant of leave for the Secretary of the Treasury to operate outside of Washington D.C.?

(QB)4. If the IRS cannot supply proof of requisite leave under 4 USC § 72, can Petitioner lawfully be approached by the Respondent in any way?"

See *as briefed* at pp.17-23 of 58 of memorandum.

3.3 In *U.S. v. Hirmer*, (#3:08cr79-011/MCR, filed Aug.21, 2008 in U.S. Dist. Pensacola, FL) the DOJ draws directly upon 26 CFR 1.1-1 as an authority to impose 26 USC's provisions upon Americans and their gross income. (See indictment at ¶ 11, "All citizens of the United States were taxed on their worldwide income. U.S.Const. Amend. XVI; Title 26, United States Code, §§ 1, 61; ***Treas. Reg. § 1.1-1(b)***.").

3.4 In the IRS' publication on frivolous arguments, 26 CFR 1.1-1 is relied upon as an authority in its supposed discrediting of a "tax protestor" argument, and none of these provisions are in said publication, at its p.16 which states that, "The Law: As stated above, for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Further, ***Treasury Regulation § 1.1-1(b) provides***, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.").

3.5 All of this serves only to fortify my belief that statute, as briefed, protects me in the ways stated in the complaint to which I file this Joinder of parties.

2. Claim: "Defendant has been deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012."

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3.6 "Section 83(a) (explains how property received in exchange for services is taxed." (See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992)). Section 83 applies to all compensation paid for services of corporations, and for the services of individuals. (See 26 CFR 1.83-3(e), (f); *MacNaughton v. C.I.R.*, 888 F.2d 418 (CA6 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (CA5 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 [1] (S.D.Miss. 1991); *Robinson v. C.I.R.*, 82 USTC 444 (1984); *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979)).

3.7 This is all that the DOJ can say about 26 USC § 83 (See Brief attached hereto and incorporated herein as Exhibit D) when an employee claims that their personals services are not taxable as gross income:

> "COMES NOW Plaintiff United States of America in response to "DEFENDANT'S MOTION TO DISMISS Counts 1, and 3-6 of indictment for lack of in personam jurisdiction, essential elements; operation of 26 U.S.C. § 83" filed at Docket No.84. While the argument and legal basis are unclear, the defendant appears to raise frivolous, oft-rejected claims that his income is not taxable and the Court has no jurisdiction over him.
>
> In the first place, the claim is essentially an insufficiency of the evidence claim, a matter not cognizable in a motion to dismiss. "An indictment is sufficient if it contains the element of the charged crime in adequate detail to inform the defendant of the charge and enable him to plead double jeopardy." *United States v. Alber*, 56 F.3d 1106, 1111 (9th Cir. 1995)(citations omitted). "The indictment should be read in its entirety, construed according to common sense, and interpreted to include facts which are necessarily implied." *United States v. DeSalvo*, 41 F.3d 505, 513 (9th Cir. 1994).
>
> Under Fed.R.Crim.P. 7(c) and indictment is generally sufficient if it tracks the language of the statute. *United States v. Musacchio*, 968 F.2d 782,787 (9th Cir. 1991). See also *Miller v. Stagner*, 757 F.2d 988, 994 (9th Cir. 1995) (information that tracks applicable statute affords defendant fair notice of crime charge; indictment need not specify mental state required for conspiracy). The defendant cites *United States v. Gordon*, 780 F.2d 1165 (5th Cir. 1986) for the proposition that indictment language that tracks the statute is not sufficient to inform the defendant of the charges against him. In fact, Gordon held that "An indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant what charge he must be prepared to meet, and enables the accused to plead acquittal or conviction in bar of future prosecutions for the same offense." 780 F.2d at 1169 (citing *Hamling v. United States*, 418 U.S. 87 (1974)).
>
> The Gordon court went on to state that "The test for validity is not whether the indictment could have been framed in a more satisfactory manner, but whether it conforms to minimal constitutional standards. Furthermore, it is generally sufficient that an indictment set forth the offense in the words of the statute itself as long as the statutory language unambiguously sets out all the elements necessary to constitute the

offense." *Id.* (citations omitted). See also *United States v. Vroman*, 975 F.2d 669, 670-71 (9th Cir. 1992). In a similar vein, the Ninth Circuit rejected the argument that an indictment charging a violation of 26 U.S.C. § 7206 and setting forth the elements of the offense was insufficient because the CFR provisions dealing with the enforcement of section 7206 reference the Bureau of Alcohol, Tobacco and Firearms, an agency unrelated to the case against the defendant. *United States v. Cochrane*, 985 F.2d 1027, 1031 (9th Cir. 1993). An indictment need only provide "the essential facts necessary to apprise a defendant of the crime charged; it need not specify the theories or evidence upon which the government will rely to prove those facts." *Id.*

A pretrial motion to dismiss an indictment under FedR.Crim.P. 12(b) may be considered by the District court only if it is capable of determination without the trial of the general issue, *i.e.*, if it involves questions of law rather than fact. *United States v. Nukida*, 8 F.3d 665, 669 (9th Cir 1993). The court can analyze questions of law at this point, but it may not invade the province of the jury as the ultimate fact finder.

Therefore, the defendant's attack on the sufficiency of the indictment is simply premature, as it is in reality nothing more than a pretrial attack on the sufficiency of the evidence. The government expects to prove at trial that the defendant evaded the payment of income taxes and willfully signed false income tax returns. The defendant may move pursuant to Fed.R.Crim.P. 29 at the close of evidence if he then believes we have failed to do so.

The basis for his challenge appears to be akin to a "wages are not income" or "fair market value exchange" argument that has been rejected for decades. The Supreme Court has defined income as "the gain derived from capital, from labor, or from both combined . . . ." *Eisner v. Macomber*, 252 U.S. 189, 207 (1920). Section 61(a) of Title 26 of the United States Code defines gross income as "all income from whatever source derived, including . . . (1) Compensation for services . . .." Wages or salaries received in exchange for services rendered are income that must be reported on a tax return. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 429-33 (1955); *Commissioner v. Smith*, 324 U.S. 177, 181 (1945); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981). Courts uniformly interpret "income" to include wages and salaries. *Connor v. Commissioner*, 770 F.2d 17, 20 (2d Cir. 1985) ("The argument that they are not has been rejected so frequently that the very raising of it justifies the imposition of sanctions").

The argument that payments for services can only be taxed to the extent that the fair market value of the compensation exceeds the value of the services, which the defendant specifically makes, is also frivolous. See *United States v. Buras*, 633 F.2d 1356, 1361 (9th Cir. 1980).

Finally, the defendant appears to argue that the Court lacks in personam jurisdiction over him, although he provides no authority for this premise. Despite his claims to the contrary, it is clear that United States District Courts have jurisdiction over criminal offenses enumerated in the Internal Revenue Code, notwithstanding the absence of a statute within Title 26 conferring such jurisdiction. Section 3231 of Title 18 of the United States Code gives the district courts original jurisdiction over "all offenses against the laws of the United States," and the Internal Revenue Code defines offenses against the laws of the United States. See, *e.g.*, *United States v. Przybyla*, 737 F.2d 828, 829 (9th Cir. 1984); *United States v. Amon*, 669 F.2d 1351, 1355 (10th Cir. 1981)("frivolous and without merit"); *United States v. Collins*, 920 F.2d 619, 628-29 and 623 n.2 (10th Cir. 1990)(rejecting argument as "silly," "frivolous," and a "fantasy").

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Likewise, and claim that he is not a "person" subject to taxation under the Internal Revenue Code has been rejected numerous times. A citizen or resident of the United States is included in the Internal Revenue Code's definition of a United States person. 26 U.S.C. § 7701(a)(30)(A). The not-a-person argument has been dismissed by the courts as "frivolous," "patently frivolous," "fatuous," and "obviously incorrect." See *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *United States v. Karlin*, 785 F.2d 90, 91 (3d Cir. 1986); *Biermann v. Commissioner*, 769 F.2d 707, 708 (11th Cir. 1985); *United States v. Rice*, 659 F.2d 524, 528 (5th Cir. 1981); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981).

The motion is without merit, and should be denied."

See *U.S. v. Warner*, #3:07-cr-00123-RRB-JDR, Anchorage, AK, filed by DOJ December 12, 2008. This was DOJ's reply to a statutory claim and it addresses nothing. The claim is:

"Under Issue (D):

4.47 Under law, to tax the FMV of services actually rendered, the Petitioner must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-3(g)) embraces the FMV of labor as a cost (***"value of any money or property paid"***), despite the fact that it is property within which the Petitioner has no basis. Property within which one has no basis is not excluded from cost under the law.

4.48 Respondent excludes from cost Petitioner's services merely upon the fact that it is property within which Petitioner has no basis, but such an exclusion is unauthorized under provisions which embrace ALL property as a cost. Petitioner must violate §§ 83, 212, 1001, 1011, and 1012 by not restoring the "adjusted basis" and allowing only the amount that remains thereafter to be taxed as "realized gain," as required under 26 CFR 1.1001-1(a). To report as gross income the value of personal services the Petitioner must enter a false statement on a gov't form in violation of 18 USC § 1001.

Questions under Issue (D):

(QD)1. Since § 83 is applicable to amounts now sought to be included in gross income, it is clear that either the Respondent or the Petitioner is in violation of it, but silence abounds. Does it apply, and, if so, how does it operate and how is the Petitioner to comply with it in the future?

(QD)2. Where, under §§ 83 and 1012, and 26 CFR 1.83-3(g), does it provide that only property within which one has a basis is to be recognized as a cost or, that intangible personal property is excluded from that which is cost?

(QD)3. If such exclusions alluded to in #(2) above do not exist, can "income tax" approach such property's FMV, as contemplated under §83?

(QD)4. In consideration of these provisions, is the FMV of labor (contract value) appropriately termed "gain derived from labor"?

(QD)5. Is the FMV of labor excluded from gross income by law? (See § 83, 212, 1001, 1012; 26 CFR 1.83-3(g)). If so, by what authority?

(QD)6. Can a Court order the exclusion from cost of property within which the Petitioner has no basis when such exception to cost cannot be found in statute or in regulation, especially when it constitutes the difference between paying a tax and not even being subject to it? Can the Respondent claim in one case that "any property"

"EXHIBIT 5"

means all property, and in another case argue that "any property" lawfully excludes certain things not recorded, mentioned, or manifest in law? Would such accounting offend the holdings in *Monsanto*, *Gonzales*, *Alvarez*, and *Rucker*? If not, why not?"

See *as briefed* at pp.25-35 of 58 of memorandum.

3.8 Read the cases cited which concern § 83 and tell me why the courts now refuse to speak of it *as briefed.* Tell me why the courts are allowed to ignore statute; tell me who's in charge. This standard of treatment you have provided for us makes government and its occupants look terrible.

3.9 None of these provisions are in the IRS publication on frivolous arguments, including § 83 which "explains how property received in exchange for services is taxed." (*Montelepre Systemed, supra,* at ¶ 3.4).

3.10 All of this evasion, which is a crime under 18 USC §§ 241 and 242, serves only to fortify my belief that I have statutory protections relating to what I earn through the sale of my personal services.

IV. CONCLUSION & VERIFICATION.

4.1 I, Janice Sue Taylor, hereby join this criminal complaint in good faith, and **I believe** in full that the allegations of lawlessness on the part of the Defendants above named are true and correct, and that they constitute the crimes alleged herein and that I am a victim thereof. The issuance of protective orders against discussion of the law leads me to believe in good faith that one or more felonies have been and are being committed against me and others by the Defendants to the Complaint. I am alleging and accusing as detailed herein regarding all matters concerning law applied to fact and seeking full remedy under the law against those individuals and institutions named.

4.2 I, Janice Sue Taylor, do not believe for one minute that 26 USC imposes any duties or requirements of any nature upon me, and I do hereby declare under penalties of perjury (28 U.S.C. § 1746, without the United States) that the statements and allegations made herein are true and correct to the very best of my knowledge, and that no material falsity is believed to exist. Executed this 1st day of the month of February, 2010

Janice Sue Taylor, Affiant/Complainant

4.3 The above affirmation was subscribed and duly sworn to before me this 17th day of the month of February, 2010, by Janice Sue Taylor.

4.4 I, Charles R Duron, am a Notary under license from the State of Arizona whose commission expires 6/5/2012

Notary signature

Dated: 2/17/2010

Respectfully submitted:

Janice Sue Taylor, Complainant and federal witness
c/o P.O. Box 982
Florence, Arizona [85312]

OFFICIAL SEAL
CHARLES R. DURON
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Exp. June 5, 2012

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RECORDING REQUESTED BY:

Internal Revenue Service

WHEN RECORDED RETURN TO:

Internal Revenue Service
210 E. Earll Drive
Phoenix, Az 85012 M/S 5023PX

OFFICIAL RECO
MARICOPA COUNTY
HELEN PUR
2002-0357181 04/
69

This Space Reserved for Recorder's Use

Form 668 (Y) (Rev. October 1993) 342

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

SMALL BUSINESS/SELF EMPLOYED AREA #11
(602) 207-8626

Serial Number 860273611

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer: SUE TAYLOR

Residence: 20 N GILBERT ROAD
GILBERT, AZ 85234-5804

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1997	[redacted]	12/07/1998	01/06/2009	42645.15
1040	12/31/1997		11/26/2001	12/26/2011	

Place of Filing

COUNTY RECORDER
MARICOPA COUNTY
PHOENIX, AZ 85003

Total $ 42645.15

This notice was prepared and signed at Phoenix, AZ, on the,

03rd day of April, 2002

EXHIBIT A
1 of 5

Signature
for ABE REYES
William H. Holmes

Title REVENUE OFFICER
(602) 207-8351

31-01-1294

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Form 668 (Y)(Rev. 10-93)

20030915 0

1008

Form 668 (Y)(c)
(Rev. October 2000)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #11
Lien Unit Phone: (303) 446-1423

Serial Number
112336203

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer SUE TAYLOR

Residence
20 N GILBERT ROAD
GILBERT, AZ 85234-5804

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1998	[redacted]	03/10/2003	04/09/2013	180035.76

Place of Filing
COUNTY RECORDER
MARICOPA COUNTY
PHOENIX, AZ 85003

Total $ 180035.76

This notice was prepared and signed at DENVER, CO, on this,

the 10th day of June, 2003.

EXHIBIT A
2 of 5

Signature
for ABE REYES D. Vaka

Title
REVENUE OFFICER
(602) 207-8351

31-01-1294

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 10-00)
CAT. NO 60025X

20041405883

9853

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #11
Lien Unit Phone: (303) 446-1447

Serial Number
202356904

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer HERBAL LAND TRUST AS NOMINEE OF SUE TAYLOR AKA SUE J ROBINSON, JANICE TAYLOR AND JANICE S TAYLOR

Residence
20 N GILBERT RD
GILBERT, AZ 85234-5804

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1997	[redacted]	12/07/1998	01/06/2009	
1040	12/31/1997		11/26/2001	12/26/2011	42659.15
1040	12/31/1998		11/26/2003	04/09/2013	180051.76

This lien attaches to property described as: Lots Thirty-three (33), Thirty-four (34) and Thirty-five (35), Block three (3), Lacy Tract, according to the plat of record in the office of the Maricopa County Recorder in Book 8 of Maps, Page 15 commonly known as: 121 N. Morris, Gilbert, AZ; 286 N. Gilbert Road, Gilbert, AZ and 20 N. Gilbert Road, Gilbert, AZ.

Place of Filing
COUNTY RECORDER
MARICOPA COUNTY
PHOENIX, AZ 85003

Total $ 222710.91

This notice was prepared and signed at DENVER, CO, on this,

the 24th day of November, 2004.

EXHIBIT A
3 of 5

Signature
for JERRY CARTER

Title
REVENUE OFFICER
(602) 207-8549

31-10-2392

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

20060193649

3359

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #6
Lien Unit Phone: (800) 913-6050

Serial Number
271241606

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer HIGLEY CITRUS TRUST #2 AS NOMINEE OF SUE TAYLOR
Nominee of

Residence
20 N GILBERT RD
GILBERT, AZ 85234-5804

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1997	[redacted]	12/26/2001	12/26/2011	42675.15
1040	12/31/1998		03/10/2003	04/09/2013	180051.76
			Official Document		

Place of Filing
COUNTY RECORDER
MARICOPA COUNTY
PHOENIX, AZ 85003

Total $ 222726.91

This notice was prepared and signed at DENVER, CO, on this,

the 27th day of January, 200.

EXHIBIT A
4 of 5

Signature
for JERRY CARTER
Susan A. Hansen

Title
REVENUE OFFICER
(602) 207-8549

26-10-2392

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Recording Office

Form 668 (Y)(c) (Rev. 2-2004)
CAT. NO 60025X

Form 668-A(ICS)
(Rev. July 2002)

Department of the Treasury – Internal Revenue Service

Notice of Levy

DATE: **March 07, 2007**

REPLY TO: **Internal Revenue Service**
Jerry Young
40 W Baseline Rd Suite 212
Tempe AZ 85283

TELEPHONE NUMBER
OF IRS OFFICE: **(602)207-8549**

NAME AND ADDRESS OF TAXPAYER:
Sue Taylor
20 N Gilbert Rd
Gilbert AZ 85234

TO: **United States District Court**
District Court Clerk's Office Arizona
Sandra Day O'Connor U.S. Courthouse
401 W. Washington St Suite 130
Phoenix AZ 85003

IDENTIFYING NUMBER(S): -3002

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Comments: This levy attaches to the $100,000 cash bond. We expect disbursement of the bond to the IRS only when the court determines the bond is to be released.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1998	$178,677.60	$76,597.86	$255,275.46

THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. ⇒

Total Amount Due $255,275.46

We figured the interest and late payment penalty to 04/04/2007

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property *(such as money, credits, and bank deposits)* that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying numbers(s) shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy —

1. Make your check or money order payable to **United States Treasury**.
2. Write the taxpayer's name, identifying number*(s)*, kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order *(not on a detachable stub.)*.
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative	Title
Jerry Young	Revenue Officer

EXHIBIT B
Page 1

Brief Regarding 4 USC § 72
And The Secretary's Authority in the Several States

1. 4 U.S.C. § 72, which is positive law, mandates that all offices of government are restricted to "the District of Columbia, and not elsewhere" unless Congress "expressly" extends their granted authority to other geographical areas by United States law.

> "**All offices** attached to the seat of government **shall** be exercised **in the District of Columbia**, and **not elsewhere**, except as otherwise **expressly** provided by **law**." 4 U.S.C. § 72 (Emphasis added).

2. United States law 4 U.S.C. § 72 provides the litmus test for the jurisdiction of every office attached to the seat of government; which includes the Secretary and his alleged Delegates.

3. 4 U.S.C. § 72 is concerned with the venue or "WHERE" offices of the United States can exercise their authority and not WHAT said offices can do. The breakdown of this law is as follows:

a. ALL offices attached to the seat of government are contemplated in this law and not just some offices – this includes the Secretary, the IRS and the Department of Justice ("DOJ"), etc.;

b. The provisions of 4 U.S.C. § 72 are mandatory by the use of the word "**shall**" by Congress. In other words, this is not an optional consideration for any United States officer, Court or Agency;

c. The "exercise" of ALL government offices is by default limited to "the District of Columbia, and not elsewhere." This means that "the District of Columbia" is the starting place for jurisdiction not the exception;

d. An exception can be made to said limitations of ALL offices to "the District of Columbia, and not elsewhere." As set forth in 4 U.S.C. § 72, authority to act outside "the District of Columbia" must be "otherwise expressly provided by law." This means that if Congress intends to extend the authority of a particular office of the United States to areas outside "the District of Columbia," it shall "expressly" delegate, grant and extend said authority in United States law; and

e. Any "expressly" delegated exception to the limitations of an officer's authority to that of "the District of Columbia, and not elsewhere" is to be authorized by Congress in "law." Since Congress (Legislative Branch) has the exclusive authority to create law for the United States (District of Columbia) and the territories and insular possessions, exceptions to the mandate of 4 USC § 72 shall be found only in United States law and not in Codes of Regulations or presidential executive orders (Executive Branch) or in Supreme Court rulings (Judicial Branch). Only Congress by United States law can authorize, grant or extend the authority of any government office outside "the District of Columbia," pursuant to 4 U.S.C. § 72.

4. The Supreme Court agrees:

"Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, **they must be conferred by Congress.**" *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 51 S.Ct. 587 (1931)(Emphasis added)

5. One of the key words in 4 U.S.C. § 72 is the word "**expressly**." This means that when Congress extends the authority of any office or officer of the United States outside "the District of Columbia, and not elsewhere," Congress will do it by "expressly" extending the Secretary's authority and by leaving no doubt that said authority has been "expressly" extended by Congress to a particular geographical area outside "the District of Columbia." The definition of "expressly" from Black's Law Dictionary, 6th Ed. is as follows:

"In an express manner; in direct and unmistakable terms; explicitly; definitely; directly. *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d. 685, 689. The opposite of impliedly. *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d. 381, 396." (Emphasis added)

6. Any exception to the limitations of 4 USC § 72 is to be authorized "expressly" by Congress in United States "law". The Courts are not empowered to extend the authority of the Secretary to any other place other than "the District of Columbia" (see case cited in ¶ 20.c herein).

7. What follows are examples of United States by which Congress has "expressly" extended the Secretary's authority outside "the District of Columbia:"

a. 48 USC § 1612(a) is cited herein as follows:

Jurisdiction. The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. **The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954** [26 USCS § § 7201 et seq.] **shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands** without the request or consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act [48 USCS § 1617]. (Emphasis added)

and

b. 48 USC § 1397. Income tax laws of United States in force; payment of proceeds; levy of surtax on all taxpayers

The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the

Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands: Provided further, That, notwithstanding any other provision of law, the Legislature of the Virgin Islands is authorized to levy a surtax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of the Virgin Islands.

and

c. 48 USC § 1421i. Income tax

Applicability of Federal laws; separate tax

The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: Provided, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

and

d. 48 SC § 1801. Approval of **Covenant to Establish Commonwealth of Northern Mariana Islands** That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows [note to this section], **is hereby approved.**

and

e. the Covenant which was approved by Congress states in part:

"Article VI

"revenue and taxation

"Section 601. (a) **The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax** on the first day of January following the effective date of this Section, **in the same manner as those laws are in force in Guam.**"

Under the NOTES under References in Text it states:

"The income-tax laws in force in the United States of America, referred to in text, are classified to **Title 26, Internal Revenue Code.**"

8. In 55 Stat. 685, the War Department (later renamed to Department of Defense ("DOD")) was "expressly" authorized by Congress to enter Arlington Country, Virginia and occupy an office building on land which had already been designated and approved for the Department of Agriculture. This shows conclusively that even when the federal government has "expressly" authorized one office of the government to operate and function outside the District of Columbia and within one of the several 50 union states ("several states") (Virginia) pursuant to 4 USC § 72, another office of the government seeking to operate in the same area outside the

District of Columbia, obtains the "expressly" granted authority by Congress for that specific office to operate in said specific geographical area outside the District of Columbia.

9. Unless Congress through United States law "expressly" grants to the Secretary the authority to Act outside "the District of Columbia" (the "WHERE"), any non-specific and general authority dealing with "WHO" has authority or "WHAT" authority is given to a particular office attached to the seat of government is to be construed as limited to and restricted to "the District of Columbia, and **NOT ELSEWHERE**," pursuant to 4 USC § 72.

10. Over 40 U.S. Attorneys have been unable to find and submit into evidence any such United States law by which Congress "expressly" extends the authority of the Secretary to the several states [1] in like manner as Congress has so "expressly" extended the authority of the Secretary to the Virgin Islands, Guam and the Northern Mariana Islands; soil over which Congress has "exclusive" legislative jurisdiction in contradistinction to the several states; soil over which Congress has "limited" and NOT "exclusive" legislative jurisdiction.

11. In addition to the mandates of 4 USC § 72, Congress has also enacted United States law which restricts the delegates of the Secretary and the Commissioner from leaving "the District of Columbia" and entering the several states without designated authority from the Secretary and the Commissioner. In 1994, 26 USC § 7803(b)(1) stated in part the following:

> "(b) Appointment and supervision
>
> "(1) Designation of Post of Duty
>
> "The Secretary shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside the District of Columbia." [2] (*Emphasis added*)

12. The current rendition of the same law is now found in 26 USC § 7804(b)(1) and reads as follows:

> "(b) Posts of duty of employees in field service or traveling
>
> "Unless otherwise prescribed by the Secretary—
>
> "(1) Designation of post of duty

---

[1] Of Course, if said law did exist, why wouldn't the Courts and U.S. Attorneys simply just present said law for all to see? What could be simpler? However, at least 40 U.S. Attorney's have been asked to present said authority and not one has been able to bring forward any said "expressly" delegated authority in United States law. Instead, they have claimed that claims based on 4 USC § 72 are frivolous without themselves offering any law in support of the notion that said jurisdiction claims are in fact frivolous or as in the case of *Walden v. U.S.*, #A-05-CA-444-LY, U.S. District Court, Austin, TX, the Court issues a protective order so the United States does not have to expose the Material Fact that Congress has not so "expressly" extended the authority of the Secretary to the several 50 union states. Courts which simply declare that the IRS or the Secretary can exercise their authority without at the same time substantiating said declaration with an "expressly" extended authority granted by Congress in United States law is nothing more than an opinion and bears no weight when deciphering United States law 4 USC § 72 and determining if the Secretary has jurisdiction in the several states pursuant thereto.

[2] Said field service personnel which have been so designated outside the District of Columbia by the Secretary or the Commissioner can be designated to work inside the District of Columbia and then Reassigned, by delegation of authority, to a designated post of duty back outside the District of Columbia after their work is done (See 26 USC § 7803(b)(1) (1994) (re-codified as 26 USC § 7804(b)(1)).

> "The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia." [2] (*Emphasis added*)

13. To confirm whether the Secretary, the Commissioner or their delegate IRS Agents have the authority to administer and enforce internal revenue laws within the several states, where is the delegation of authority from the Secretary to the Commissioner or other alleged delegates which "designate" that IRS agents or delegates acting on behalf of the Secretary have a "post of duty" in geographical areas "outside the District of Columbia" and within the several states for the purpose of conducting "official business" pursuant to 26 USC § 7803(b)(1) (1994) (re-codified as 26 USC § 7804(b)(1)) and 4 USC § 72? Since over 40 U.S. Attorneys cannot produce said law or said delegation of authority, it can only be concluded that no such delegation of authority exists in United States law. For this reason, no designation has been published in the federal register thereby giving notice to Citizens in the several states of the extended powers of the Secretary and his delegates. If no such United States law exists, then the Secretary has no authority "expressly" granted to him by Congress which he can exercise with the several states.

14. This should remove all doubt and should confirm to the reader that Congress does in fact "expressly" extend the authority of the Secretary to other locations outside "the District of Columbia" in United States law when it intends to do so. In fact, if Congress follows the mandates of 4 USC § 72 with regard to the Virgin Islands, Guam and the Northern Mariana Islands—territories or insular possessions of the United States over which it has exclusive legislative authority—why shouldn't Congress also follow the mandates of 4 USC § 72 with respect to the several states—areas over which it does NOT have exclusive legislative jurisdiction? There is no legal argument or basis in law by which one can sustain the contention that Congress follows the mandates of 4 USC § 72 in territories or insular possessions of the United States over which it has a greater "exclusive" legislative authority and Congress ignores the mandates of 4 USC § 72 in areas such as the several states over which Congress has only a lesser "limited" legislative or constitutional authority.

15. It has been long established by the Courts that *in personam* and subject-matter jurisdiction are paramount to an Agencies authority to act. The following ruling demonstrates that it is not frivolous for one to demand, from an Agent acting on behalf of the Secretary, what Act of Congress "expressly" extends the authority of the Secretary outside "the District of Columbia" to the several states pursuant to 4 USC § 72:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the **exclusive** jurisdiction of the national government." *Caha v. United States,* 152 US 211 (Emphasis added)

16. The location of "United States", as defined by law, further confirms that the authority of the Secretary is restricted to "the District of Columbia, and not elsewhere." The Uniform Commercial Code at § 9-307(h) states:

> "(h) The United States is located in the District of Columbia."

17. This exact provision is reflected in various state codes, including, but not limited to California and Texas.[3]

18. Unless the Secretary or his delegates (IRS) as a complaining party in any action can establish that Congress has "expressly" extended the authority of the Secretary outside "the District of Columbia" to the several states, any Actions of any employee of the United States and delegate of the Secretary are null and void:

> "Jurisdiction is essential to give validity to the determinations of administrative agencies [i.e., referrals to the DOJ] and where jurisdictional requirements are not satisfied, **the action of the agency is a nullity...**" *City Street Improv Co. v. Pearson*, 181 C 640, 185 P. (1962); *O'Neil v. Dept. of Professional & Vocational Standards*, 7 CA2d 393, 46 P2d 234 *(Emphasis added)*

19. There is no law to rebut the facts and law as presented herein relative to 4 USC § 72. It is required that jurisdiction appear on the record pursuant to 4 USC § 72. Failure to do so is a denial of Petitioner's rights to due process:

> "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings" *Hagans v. Lavine*, 415 US 533.

20. No one should not be deceived by the smoke and mirror tactics of U.S. Attorney's. Non-responsive answers to inquiries to date. Some of these non-responsive answers are as follows:

a. Treasury Order 150-10 (See ¶ 26) extends the Secretary's authority to the Commissioner.

   i. This Treasury Order does not address the "expressly" delegated authority of the Secretary;

   ii. Furthermore, this is a general delegation of authority which addresses "WHAT" the Commissioner can do and does not address "WHERE" the Commissioner can exercise the Secretary's authority pursuant to 4 USC § 72;

   iii. Nothing in TDO 150-10 "expressly" extends the authority of the Commissioner to the several states;

   iv. Furthermore, this Treasury Order has not been published in the Federal Register, pursuant to 44 USC § 1505 and 5 USC § 553 and therefore it is not applicable to the Citizens in the several states. The Secretary admits this by his ruling in 1953,[4] where he requires all divisions or units of the IRS to publish in the Federal Register any item of concern to the American public. This was even more clearly stated in 1955[5] as follows:

> *"It shall be the policy to publish for public information all statements of practices and procedure issued primarily for internal*

[3] See California Commercial Code § 9307(h) and Texas Business & Commerce Code § 9.307(h).
[4] Revenue Ruling 2 (1953-1 CB 484).
[5] Rev Procd. 55-1 (1955-2 CB 897)

use, and, hence, appearing in internal management documents, which affect rights or duties of taxpayers or other members of the public under the Internal Revenue Code and related statutes."

v. Since TDO 150-10 has not been published in the Federal Register, it is not applicable to Citizens in the several states; and

vi. Therefore, citing TDO 150-10 is non-responsive to the mandates of 4 USC § 72.

b. U.S. Attorneys have recently begun citing *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to the jurisdictional challenges regarding the Secretary. The *Hughes* ruling claims that "4 USC § 72 does not foreclose the authority of the IRS outside the District of Columbia." The only reason given by the *Hughes* Court is that the President in 26 USC § 7621 is authorized to establish internal revenue districts outside Washington, D.C.[6] This argument fails every aspect of the 4 USC § 72 litmus test as follows:

i. Establishing internal revenue districts outside Washington, D.C. does not have the same effect in law as establishing internal revenue districts within the several states; especially in light of 4 USC § 72. It has been cited herein that the Secretary can indeed leave Washington, D.C. and enter The Virgin Islands, Guam and the Northern Marianas (to name three other geographical locations) The issue is can he enter the several states?;

ii. 4 USC § 72 mandates that ALL offices associated with the government that have jurisdiction within the several states shall be "expressly" authorized by Congress to act within the several states in United States law. Authorizing the office of President in 26 USC § 7621 does not "expressly" authorize the office of Secretary when the Secretary is not even mentioned;

iii. The term ALL OFFICES, whether defined or not, includes all offices associated with the seat of government. If this refers to buildings, then ALL BUILDINGS are to be in "the District of Columbia, and not elsewhere" unless Congress "expressly" provides otherwise in United States law. It is unlikely that Congress intended that the term "offices" would refer to buildings since buildings cannot exercise any authority at all; only people can exercise authority and it is the authority of said offices which must be "exercised" within only "the District of Columbia, and not elsewhere";

iv. With few exceptions, it is the Secretary who is authorized by Congress to write all needful rules and regulations for the administration and enforcement of Title 26 (See 26 USC §§ 7801, 7805). Therefore it is that Office which must acquire express leave by Congress to act within

[6] Congress has "expressly" extended the authority of the Secretary to the Virgin Islands with respect to 26 USC Chapter 75 and this area is obviously outside "the District of Columbia" but not remotely associated with the several states.

the several states not that of the President. The *Hughes* Court implies in error that 26 USC § 7621 is the "expressly" stated grant of leave issued by Congress as required under 4 USC § 72, claiming that the office of the President of the U.S. is somehow the same office as that occupied by the Secretary.

v. The term "State" as used in 26 USC § 7621 includes "the District of Columbia" (see 26 USC § 7701(a)(10))[7]. Even if "State" could be concluded to include the several states, this definition does not "expressly" extend the office of Secretary to the several states when the several states are not "expressly" mentioned in the meaning of "State" as used in § 7621 (see § 7701(a)(10)). A "definition" is a limitation upon the term defined and it excludes what is not specifically included (See any dictionary or Black's Law Dictionary 6th Edition). Without rebuttal to the contrary, Congress has limited the Secretary's authority to "the District of Columbia," the Virgin Islands, Guam and the Northern Marianas (see ¶¶ 7 *supra*), never having "expressly" granted the Secretary the statutory leave to exercise his authority in the several states.

vi. Moreover, there is no evidence in the *Hughes* case or in any other case to establish the material fact that the President has established said internal revenue districts[8] in the several states[9]? However, there is evidence that the President established "customs districts," but no internal revenue districts have ever been established by the President within the several states. [10] If one argues that the President has authorized the Secretary to create internal revenue districts, then what

---

[7] Under this definition, Alaska and Hawaii were removed from applicability upon receiving freely associated compact state status (See P.L. 86-624, § 18(j); P.L. 86-70, § 22(a)). The several states are "countries" (See 28 USC § 297(b)).

[8] The *Hughes* Court implies that the President's (Secretary's alleged "implied") authority outside Washington, D.C. pursuant to 26 USC § 7621 somehow means that the Secretary's authority has been "expressly" extended to the several states when in fact all the Court said was that the IRS can act outside of Washington, D.C. Congress has indeed extended the Secretary's authority (and presumably the IRS) to areas outside "the District of Columbia" but the several states is not one of those areas. As a result of this misleading description of the IRS (Secretary's) authority, the Courts continue to promulgate the error that *Hughes* extends the authority of the IRS to the several states which violates the letter and spirit of 4 USC § 72. To date, no Court or U.S. Attorney has identified one U.S. law by which Congress has "expressly" extended the authority of the Secretary to the several states thereby forcing American Citizens to speculate that no said authority has been established by Congress for the Secretary in the several states.

[9] In 1998, via Executive Order ("E.O.") #10289, as amended, President William J. Clinton authorized the Secretary to establish revenue districts under authority of 26 USC § 7621. Although § 7621 is not listed in the Parallel Table of Authorities and Rules, E.O. #10289 is listed. The implementing regulations for said Executive Order are found in 19 CFR Part 101. Said regulation establishes *"customs collection offices"* in each of the several states; it does not establish "internal revenue districts". A note at 26 CFR § 301.7621-1 confirms that E.O. #10289 is the only authority for establishing revenue districts.

[10] The burden of proof that said districts have been established by the President within the several states is upon the Court and U.S. Attorneys if they hope to establish jurisdiction on the record. Without said evidence in the record, Respondent and the Courts cannot assume that said districts exist and therefore cannot assume that Secretary has any authority in the several states.

evidence can be entered into the record to show that the Secretary has by treasury order or regulation, created said internal revenue districts within the several states?

vii. If no internal revenue districts have been established in the several states by the President or even by the Secretary, then out of which internal revenue districts allegedly established by the President within the several states does the Secretary administer and enforce internal revenue laws?

c. Several Court rulings have stated that the IRS can exercise its authority outside the District of Columbia.

i. Every case cited to date by any U.S. Attorney is off-point. 4 USC § 72 states that any "expressly" granted exception to the limitations of "the District of Columbia, and not elsewhere" as mandated, are to be found in United States law and NOT the Courts.

> *"Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable,* ***they must be conferred by Congress.*** *" Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587 (1931)(Emphasis added)*

ii. Generally, all cases cited to date have dealt with WHAT the Secretary can do and not WHERE he can do it. 4 USC § 72 is about the geographical location or WHERE the Secretary can exercise his authority and nothing else.

iii. Unless one can present the law which so "expressly" extends the authority of the Secretary to the several states, said offices can only exercise their authority within the geographical areas "expressly" authorized by Congress in law (See ¶ 7 *supra*); and

iv. Therefore citing court rulings is a non-responsive answer.

d. Judges have recently attempted to protect U.S. Attorneys and the government by stating on the record and in orders that the Citizen is arguing that the Secretary cannot leave "the District of Columbia." Any argument to this effect is a falsification of the record. The contention has always been that he is restricted from ENTERING the several states unless Congress has "expressly" authorized him to do so in United States law. No law, No Authority!

21. The Courts, U.S. Attorneys, the Secretary, the Commissioner and the IRS have a duty to address the issue of jurisdiction as cited herein. Neither the Courts nor the Secretary and his delegates can enforce internal revenue laws within the several states without the Secretary having a clear and "expressly" granted authority to exercise his authority within the several states. To do so would be a denial of Petitioner's rights to due process and his/her right to the protections afforded by United States law—4 USC § 72 and 26 USC § 7803(b)(1) (1994) (re-codified as 26 USC § 7804(b)(1)—to not be bothered by the government (See 18 USC § 242) and if said right is denied or ignored by more than two officers of the United States, said denial constitutes a denial of Petitioner's rights pursuant to 18 USC § 241.

22. There simply is no "expressly", "unmistakable" and "explicitly" (see definition of "Expressly" in ¶ 4 *supra*) Act of Congress by which Congress has "expressly" extended the authority of the Secretary or that of his alleged Delegates to administer and enforce internal revenue law outside "the District of Columbia" and within the several states with regard to the personal income tax and withholding related thereto.

23. Moreover, the offices associated with the seat of government are foreign to the several states and this is precisely why the jurisdiction of the United States is restricted to "the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."

> "The United States Government is a foreign corporation with respect to a state." Volume 20: Corpus Juris Secundum, (P 1785: NY re: Merriam 36 N.E. 505 1441 S.Ct. 1973, 41 L. Ed. 287)

24. The United States Supreme Court removes all doubt by stating this fact in no uncertain terms:

> "The laws of Congress...do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." *Caha v United States*, 152 US, at 215 (Emphasis added)

25. It is not unreasonable to demand said "expressly" delegated authority in light of the following Treasury Department/Delegation Orders (TDO) by which the Secretary "expressly" authorized the Commissioner the authority to ACT in certain areas outside "the District of Columbia":

a. The Commissioner's authority was published in the Federal Register via Treasury Department Order (TDO) 150-42 dated July 27, 1956, 21 Fed. Reg. 5852. It delegated to the Commissioner the following authority:

> "The Commissioner shall, to the extent of authority vested in him, provide for the administration of the United States Internal Revenue laws in the Panama Canal Zone, Puerto Rico and the Virgin Islands."(Emphasis added)

b. TDO 150-105 of January 24, 1985, Designation of Internal Revenue Districts states at paragraph 4, U.S. Territories and insular possessions:

> "The Commissioner Internal Revenue Service shall, to the extent of authority otherwise vested in him, provide for the administration of the United States Internal Revenue laws in the U.S. territories and insular possessions and other **authorized** areas of the world. [areas authorized by other delegations of authority]" [11](Emphasis added)

c. TDO 150-104 of January 24, 1985, Designation of Internal Regions and Regional Service Centers, at paragraph 4. U.S. Territories and Insular Possessions:

> "The Commissioner, Internal Revenue Service shall, to the extent of authority otherwise vested in him, provide for the administration of the United States Internal Revenue laws in the U.S. Territories and insular

[11] TDO 150-105 of 1/24/85 was superseded by TDO 150-1 2/27/86.

possessions and other **authorized** areas of the world." (Emphasis added)

d. Then, in February 27, 1986, the Secretary delegated additional authority to the Commissioner in TDO 150-01 51 Fed. Reg. 9571 on Page 9573, it states:

> "...the Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States Internal Revenue laws in the "U.S. Territories and insular possessions and other **authorized** areas of the world." (Emphasis added)

e. TDO 150-01 dated October 27, 1987 at Paragraph 5: U.S. Territories and Insular Possessions" is identical to TDO 150-01 of Feb. 27, 1986.

f. TDO 150-01 dated September 28, 1995, at Paragraph 3. U.S. Territories and Insular Possessions" is identical to TDO 150-01 of October 27, 1987.

> "The Commissioner of Internal Revenue shall, to the extent of authority vested in the Commissioner, provide for the administration of the United States internal revenue laws in the **U.S. territories** and **insular possessions** and other areas of the world." (Emphasis added)

26. In TDO 150-10 the Secretary delegates his authority to the Commissioner as follows:

> "1. The Commissioner of Internal Revenue shall be responsible for the administration and enforcement of the Internal Revenue laws."

27. Given the fact that TDO 150-10 seems to now give the Commissioner authority to administer and enforce internal revenue law without any geographical limitations, it must be noted that the cancellation of TDO 150-01 by TDO 150-02 decommissioned the districts in the several states and located the 13 offices created by TDO 150-02 within the District of Columbia. In short, when districts existed within the several states, the Commissioner was authorized by the Secretary to act only outside the District of Columbia and within the Panama Canal Zone, Puerto Rico the Virgin Islands, U.S. territories and insular possessions; not within the several states. When the districts are decommissioned in the several states, the commissioner is given authority to act seemingly without any geographic limitations. By this action, one can only conclude that 4 USC § 72 now becomes the limiting factor since Congress has not "expressly" extended the authority of the Secretary to the several states, and the Secretary therefore can only extend his authority granted by Congress to the Commissioner and other delegates in TDO 150-10 to the same geographical areas in which Congress has authorized the Secretary to enter (i.e., the District of Columbia, the Virgin Islands, Guam and the Northern Marianas pursuant to 4 USC § 72, 48 USC §§ 1612(a), 1397, 1421i, 1801 (citing Northern Marianas Covenant § 601), respectively). [12]

28. Since the Secretary on previous occasions has "expressly" granted authority to the Commissioner, in accordance with the mandates of 4 U.S.C. § 72, in specific areas outside "the District of Columbia" — namely "Panama Canal Zone", "Puerto Rico", "the Virgin Islands" and "U.S. territories and insular possessions" — it is not unreasonable for a Citizen to expect the

[12] There may be other geographical locations so authorized by Congress. However, the several states is not one of those geographical areas; at least 40 U.S. Attorneys have been unable to find said express grant by Congress.

Secretary to follow the same lawful protocol and mandate of 4 U.S.C. § 72 and "expressly" grant the Commissioner the authority to administer and enforce internal revenue law outside "the District of Columbia" to geographical areas which include the several states if he intends to grant said express authority to the Commissioner and his Delegates.

29. All one has to do is show one Act of Congress which "expressly" extends the authority of the Secretary to the several states and this controversy would be over. What could be simpler?

30. It is criminal, in light of the above, for United States Courts and Agencies NOT to presume that the authority of the Secretary, the Commissioner and the IRS is limited and restricted to "the District of Columbia, and not elsewhere" unless it can be shown that Congress has "expressly" extended the of the Secretary in United States law to the several states.

31. In the recent confirmation hearings of Supreme Court Justices John G. Roberts, Jr. and Samuel Anthony Alito, Jr reiterated numerous times that this country operates under the rule of law and that it is the law and the intent of Congress when it writes said law that dictates the outcome of cases and not the arbitrary decisions of the Court. If this is true, then the rule of law mandates that no office of the government can exercise their authority outside "the District of Columbia", pursuant to 4 USC § 72, unless Congress "expressly" extends said authority as shown in ¶ 7 *supra*. Following the rule of law in spite of decades of the People's misconceptions and the governments misrepresentations and in spite of the consequences resulting from following the law, is what makes United States Courts honorable.

32. In footnote 16 of a 1980 case, *U.S. v. Will*, 449 U.S. 200, the court states:

> "In another, not unrelated context, Chief Justice Marshall's exposition in Cohens v. Virginia, 6 Wheat, 264 (1821), could well have been the explanation of the Rule of Necessity; he wrote that a court "must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution**. Questions may occur which we would gladly avoid; but we cannot avoid them." *Id.*, at 404 *(Emphasis added)*

33. Finally, 4 USC § 73 states:

> "In case of the prevalence of a contagious or epidemic disease at the seat of government, the President may permit and direct the removal of any or all the public offices to such other place or places as he shall deem most safe and convenient for conducting the public business."

34. Can one presume that Congress intends to hereby grant the President the authority to remove any or all public offices to places outside the United States (i.e. other countries) or is this a grant by Congress to the President to remove offices of the government from "the District of Columbia" and to exercise said offices within the surrounding several states which have not been affected by said epidemic disease? If a grant for offices attached to the seat of government is not required pursuant to 4 USC § 72 for the several states, then why did Congress make this

grant in 4 USC § 73? Certainly one would not argue that the President was authorized to take our government to another country on another continent?

Questions Relevant to 4 USC § 72

Q1. Does 4 USC § 72 restrict the actions of the Secretary to "the District of Columbia, and not elsewhere" unless Congress "expressly" authorizes the Secretary to act in other specific geographical areas outside "the District of Columbia" over which Congress has jurisdiction?

Q2. Can anyone point to ANY United States law by which Congress has "expressly" extended the authority of the Secretary to administer and enforce internal revenue laws outside of "the District of Columbia, and not elsewhere" and within the several states as mandated by Congress in 4 USC § 72?

Q3. If one cannot present any such law, then by what authority do the Secretary and the IRS justify their actions outside "the District of Columbia, and not elsewhere" and within the several states?

Q4. Does the right to due process embrace or exclude one's access to the letter of the law?

The definition of "expressly" from Black's Law Dictionary, 6th Ed. is as follows:

> "In an express manner; in direct and unmistakable terms; explicitly; definitely; directly. St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 76 S.W.2d. 685, 689. **The opposite of impliedly**. *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d. 381, 396." *(Emphasis added).*

Q5. Does 26 USC § 7621 qualify as an "expressly" granted authority to the Secretary to act in areas within the several states or does § 7621 at best present only an "impliedly" granted authority ("the opposite of expressly")?

Q6. Does 26 USC § 7621 satisfy the following litmus tests of 4 USC § 72:

1. "All offices" — the Secretary or just the President?
2. "shall" — is this mandatory or can the Secretary ignore this law?
3. "the District of Columbia, and not elsewhere" — is this a restriction to the geographical area of the District of Columbia or not?
4. "expressly" — does an implied grant of authority to the President meet the "expressly" criteria of 4 USC § 72?

Q7. If one cites *Hughes v. United States*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to inquiries regarding the jurisdictional authority of the Secretary in the several states, does the wording of 4 USC § 72 support the conclusion of the *Hughes* Court which claims that "4 USC § 72 does not foreclose [restrict] the authority of the IRS [Secretary] outside the District of Columbia?" Is there anything in the English language that would support the conclusion of the *Hughes* Court? Especially when the IRS operates under the authority granted by Congress to the Secretary?

Q8. The only reason given by the *Hughes* Court for their rendition of 4 USC § 72 is that the President is authorized to establish internal revenue districts outside Washington, D.C. Does this argument meet the 4 USC § 72 litmus test?

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." [*Caha v. United States,* 152 US 211] *(Emphasis added).*
>
> "Official powers cannot be extended beyond the terms and necessary implications of the grant [by Congress]. If broader powers be desirable, **they must be conferred by Congress.**" *Federal Trade Commission v. Raladam Co.,* 283 U.S. 643, 51 S.Ct. 587 (1931)*(Emphasis added)*

Q11. Does a Citizen have a right to see the law which "expressly" extends the authority of the Secretary outside "the District of Columbia" to the several states when he/she asks for said law or is it legally and morally right for the Secretary, several U.S. Attorneys and Courts to be completely silent in response to said questions?

Q12. When the federal and/or state governments and their agents refuse to show one law that satisfies the mandate of 4 USC § 72, is it a crime for one to be forced to speculate that no law exists, that Congress has not "expressly" extended the authority of the Secretary to the several states and that there is no duty for one to file a return or pay any particular alleged tax allegedly made so by laws which have not been "expressly" extended to the several states?

Q13. Why does the government refuse to show the law and choose instead to ask the Court for a protective order so they don't have to reveal the truth about the authority of the Secretary within the several states? [13] Wouldn't it be easier to just show the law?

Q14. Is it reasonable for one to continue to act upon their understanding of the law until it is dispelled with open discussion and responsive answers from officers of the United States (i.e., the DOJ, the Secretary and the IRS) with logical application of the law to the contrary?

Q15. How can one avoid prosecution in the future if one believes the conclusions of law which the government cannot disprove?

If the issues raised herein are incorrect with regard to the operation of the law as briefed, the government would have a brief proving said errors and they would not require a protective order to conceal the fact that the Secretary is not "expressly" authorized by Congress to act within the several states. Until there is open discussion and responsive answers from officers of the United States (i.e., Federal Agents or Attorneys) with logical application of the law to the contrary, one cannot do anything other than continue to act upon their understanding of the law as briefed and order one's life with the understanding that there is no law by which Congress has "expressly" extended the authority of the Secretary, the Commissioner and the IRS to the several states pursuant to 4 USC § 72.

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[13] In fact, in the case of *Walden v. U.S.*, #A-05-CA-444-LY, U.S. District Court, Austin, TX, the government asked for a protective order so they did not have to answer the questions relative to 4 USC § 72. Moreover, Walden and others have filed a criminal complaint with over 80 members of Congress regarding said protective order and other issues, including, but not limited to, 4 USC § 72.

Brief Regarding 26 USC § 83(a)

1. This Brief is a detailed analysis of the issue of cost with regard to 26 USC § 83(a). Even if Congress had "expressly" extended the Internal Revenue Code ("IRC") to the several 50 union states pursuant to 4 USC § 72—which it has not done—§ 83(a) demonstrates that the value of one's labor is excluded from "Gross Income" and therefore the value of one's labor is not and cannot be subject to any federal income tax if properly deducted from gross revenue pursuant to 26 USC § 83(a) and the regulations thereunder.

The IRS has fraudulently denied Citizens a right found in 26 USC § 83(a)

2. Citizens and all Tax Professionals generally determine what is to be included in "Gross Income" by starting with 26 USC § 61(a).

3. 26 USC § 61(a) defines what is "Gross Income:"

"Gross income defined

"(a) General definition

"Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

"(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;" (Emphasis added)

4. Once "Gross Income" is determined pursuant to 26 USC § 61(a), Citizens and Tax Professionals generally proceed to 26 USC § 62 to determine what can be deducted from "Gross Income" which, when said items are deducted, then leaves a balance called "Adjusted Gross Income."

5. Once "Adjusted Gross Income" is determined, Citizens and Tax Professionals generally proceed to 26 USC § 63 to determine what further amounts can be deducted which, when said items are deducted, then leaves a balance known as "Taxable Income."

6. Once "Taxable Income" is determined, Citizens and Tax Professionals then generally proceed to 26 USC § 1 to determine their tax liability.

7. However, Citizens and Tax Professionals rarely read and understand the first seven words of 26 USC § 61(a); "***Except as otherwise provided in this subtitle.***" This is the subtle clue to let Citizens and Tax Professionals know that there are other definitions of or exclusions from "Gross Income" which supersede this 26 USC § 61(a) definition of "Gross Income." For example full time ministers of the gospel are allowed to **exclude** from "Gross Income" the rental value of a home furnished to them by their church as part of their compensation. 26 USC § 107 states:

26 USC § 107. Rental value of parsonages

*In the case of a minister of the gospel, **gross income does not include**—*

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental

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value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

8. As one can easily from 26 USC § 107, a minister's home compensation is excluded from "Gross Income" and therefore cannot be taxed under any circumstances. Since 26 USC §§ 62 [adjusted gross income] and 63 [taxable income] both start from a value known as "Gross Income," one cannot possibly have a federal tax liability or be subject to a federal tax without first having some amount of "Gross Income."

9. Pursuant to 26 USC § 61(a)(1), compensation for services is included in "Gross Income," **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE**. This means that if another section of subtitle A provides for a different definition of "Gross Income" or another section of subtitle A articulates what is to be included in or excluded from "Gross Income," then the § 61(a) definition is not applicable. To state it another way, if another section of subtitle A excludes any portion of one's compensation from "Gross Income," then the § 61(a)(1) definition does not apply.

10. For the past several years, millions of Citizens have received compensation for services actually rendered and considered it to be included in "Gross Income." In summary, 26 USC § 83 explains how property received in exchange for services rendered is taxed.[1] Section 83 applies to all compensation paid for both the services of corporations, and for the services of individuals.[2] Labor is property[3].

> *"...It has been well said that, **the property which every man has is his own labor, as it is the original foundation of all other property so it is the most sacred and inviolable.** The patrimony of the poor man lies in the strength and dexterity of his own hands, and **to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of the most sacred property**" Butchers' Union Co. v. Crescent City Co., 111 U.S. 746. 1883.*

11. The fair market value ("FMV"") of property ("amount paid" or "labor") is established through the terms of an "arm's length transaction."[4]

12. The language of 26 USC § 83(a) states that when compensation is received [in exchange] for services rendered, ONLY the "**excess**" of the "property" [compensation] over the "amount paid" [value of labor] in cost is to be included in gross income. Section 83(a) states:

> *§ 83. Property transferred in connection with performance of services*
>
> *(a) General rule*
>
> *If, **in connection with the performance of services** [labor], **property** [compensation] **is transferred** to **any person** [employee] other than the person for whom such services are performed [employer], **the excess of**—*

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[1] See Montelepre Systemed, Inc. v. CIR., 956 F.2d 496, 498 at [1] (CA5 1992)

[2] See 26 CFR § 1.83-3(e), (f); MacNaughton v. CIR, 888 F.2d 418 (CA6 1989); Pledger v.CIR, 641 F.2d 287 (CA5 1981); Alves v. CIR, 734 F.2d 478, 481 (CA9 1984); Klingler Electric Co. v. CIR, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); Robinson v. CIR, 82 USTC 444 (1984); Cohn v. CIR, 73 USTC 443, 446 (1979).

[3] See ¶ 10 herein and also Butcher's Union Co. v. Crescent City Co., 111 U.S. 746, 757 (1883); Slaughterhouse Case, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); Adair v. US., 208 U.S. 161, 172 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); Black's Law Dictionery, 6th Ed., "property."

[4] See 27 CFR § 70.150(b); U.S. v. Cartwright, 411 U.S. 546, 552 (1973); Hicks v. U.S., 335 F.Supp. 474, 481 (Colo.1971); Pledger v. CIR, supra; Black's Law Dictionary, 6th Ed., "Arm's length transaction."

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*(1) **the fair market value of such property** [compensation] (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, **over***

*(2) **the amount** (if any) **paid** [labor] **for such property** [compensation], **shall be included in the gross income of the person** [employee] **who performed such services** [labor] in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.*

13. The formula for "Gross Income" pursuant to 26 USC § 83(a) is:

"Gross Income" = "Excess"; and

"Excess" = ("property") minus ("amount paid") or

"Excess" = (compensation) minus (value of labor).

14. The "amount paid" is defined in 26 CFR § 1.83-3(g) as the definition of cost:

*(g) Amount paid. **For purposes of section 83** and the regulations thereunder, **the term "amount paid" refers to the value of any money or property** [labor—labor is property; see ¶ 10 above] **paid for the transfer of property** [compensation] **to which section 83 applies.***

15. The value of the "amount paid" [labor] is determined by what the employer paid [compensation] for the services rendered [labor]. 26 CFR § 1.83-3(g) is all inclusive and includes "any money or property."

16. To confirm that this understanding is correct, one can come to the same conclusion by reviewing other sections of the IRC and the regulations thereunder.

17. To properly calculate what constitutes "Gross Income," pursuant to 26 USC § 83(a), one needs to know "the amount paid" (cost of labor) so it can be deducted from the "property" (compensation) in order to calculate the "excess" [realized gain/profit] which is to be included in the "Gross Income." To determine these factors, one can turn to the following regulations:

*"If property [compensation] to which 1.83-1 applies is transferred [from employer to employee] at an arm's length [see Black's, 6th], the basis [cost of labor] of the property [compensation] in the hands of the transferee [recipient or employee] **shall** be determined under section 1012 and the regulations thereunder" 26 CFR § 1.83-4(b)(2)*

18. Before one can determine the "excess," one must identify the "amount paid."

19. Labor is property (see ¶ 10 herein). As property, labor has a value with regard to the related compensation transaction and 26 USC § 1012 will either include or exclude said cost for [value of] labor.

§ 1012. Basis of property—cost

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***The basis of property** [compensation] **shall** be the **cost of such property** [labor]...*

20. The regulations confirm the basis of property:

26 CFR § 1.1012-1 Basis of property.

*(a) General rule. In general, the basis of property [compensation] is the cost thereof. **The cost is the amount paid** [labor] **for such property** [compensation] **in cash or other property** [labor]...*

21. Congress has cited what it considers to be a "cost." The "amount paid for such property in cash or other property." One can see that nothing is excluded from that which is considered by Congress to be a cost. If Congress intended to exclude labor from that which is a cost, 26 USC § 1012 would reflect such an exclusion. Since labor as property is not excluded, it is to be considered as a cost in the calculation of the "excess" which is to be included in "Gross Income" and in the determination as to whether one has enough "Gross Income" to make it necessary to even file a return.

22. The "amount paid" [labor] is the value of the cost [labor] and is also known as the "adjusted basis." Regulations require that this amount [value of labor] be "withdrawn" from the amount realized [compensation] in the [payment for services] transaction and that it be "restored to the taxpayer."

***26 CFR § 1.1011-1** Adjusted basis.*

***The adjusted basis** for determining the gain or loss from the sale or other disposition of property **is the cost or other basis prescribed in section 1012 [see ¶ 20 herein] or other applicable provisions of subtitle A** of the code, adjusted to the extent provided in sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of internal revenue laws.*

26 CFR § 1.1001-1(a)

*(a) ...**from the amount realized** [compensation] **upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis** [value of labor] **prescribed by section 1011 [which includes also § 1012[and the regulations thereunder**...**The amount which remains** [excess] **after the adjusted basis** [cost of labor] **has been restored to the taxpayer constitutes the realized gain** [profit or "gross income"].*

23. After determining the value of property [labor] that is a cost, as defined by United States law [see 26 CFR § 1.1012-1(a) cited at ¶ 20 herein, labor not excluded], for one to comply with 26 USC § 83(a), and 26 CFR § 1.1001-1(a), the value of the "amount paid" [labor], or the "adjusted basis" [labor], must be subtracted from the amount realized [compensation] BEFORE including ONLY the "excess" balance which remains (if any) in "Gross Income." **Without any "excess" there is no "gross income."**

24. Again, the conclusion reached by reviewing additional sections of the IRC and the regulations thereunder, as cited above, is the same conclusion articulated by the Secretary in 26 CFR § 1.83-3(g) where the "amount paid" is defined as "any money or property" paid for the transfer of property (labor is not excluded):

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*(g) Amount paid. **For purposes of section 83** and the regulations thereunder, **the term "amount paid"** [labor] **refers to the value of any money or property** [labor] **paid for the transfer of property** [compensation] **to which section 83 applies...***

25. In fact, Treasury Regulation 26 CFR § 1.61-1(b) which are applicable to 26 USC § 61(a) it states that "...To the extent that another section of the Code [§ 83(a)] or of the regulations thereunder, provides specific treatment for any item of income, such other provision [§ 83(a)] shall apply **notwithstanding section 61 and the regulations thereunder.**" Therefore, § 83(a) overrides § 61 when it comes to determining the amount of one's federal "gross income". Clearly the Secretary and Congress intends that § 61 supersedes § 83(a) when it comes to calculating one's "gross income" for filing and tax liability purposes.

26. The section(s) of the IRC which embrace(s) intangible personal property as a *cost* (see 26 USC § 1012) is calculated as one's cost when having only sold one's labor, and 26 CFR § 1.83-3(g) does the same. In fact, in order to impose amounts which are not to be included in "Gross Income" upon Citizens, the Secretary must deny Citizens their rights as articulated by Congress in 26 USC §§ 83(a), 212, 1001, 1011, and 1012.

27. The law does not exclude any property, for which there is no basis, from cost. The cost equals the "value" of any and all property (labor) disposed to obtain other property (compensation), unless it is expressly excluded under 26 USC § 1012. The issue of basis never enters the equation.

28. The way one can determine the value of one's labor is to look at the check one received and determine its value. If one receives $1,000 for their labor, the value or FMV of their labor is $1,000.

29. The difference between cost and income is further articulated by Congress in 26 USC § 212 as follows:

§ 212. Expenses for production of income

*In the case of an individual, **there shall be allowed as a deduction all the ordinary and necessary expenses** [cost] **paid or incurred during the taxable year—***

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

30. Thus a deduction is mandated (**"shall"**) but it is not specified how the expenses are to be deducted. Based on 26 USC § 83(a), the deduction [labor] is to be taken [returned to the "taxpayer"] from "such property" [compensation] to create the "excess" which ONLY then is said "excess" included in "Gross Income." **If there is no "excess" then there is no "Gross Income."**

31. As used in the cited statutes and regulations, the terms "any" or "any property" are to be construed as all inclusive until Congress "expressly" provides an exception to support the notion that such terms are not all inclusive.

32. There is ample case law to support the principle of statutory construction which makes the term "any property" all inclusive; meaning that nothing is to be excluded by the word "any." This is confirmed by the following cases where the United States contends successfully that

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"any property" is all inclusive and means all property (see *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto*). Although these cases are not about taxes, the issue of "any property" is argued by the DOJ successfully that "any property is all inclusive and means all property. Cases are quoted below:

33. **1989 -** *Monsanto (In summary)* - Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that **"any property"** is all inclusive and therefore means the U.S. can seize any and all property unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant.

Monsanto in detail follows:

*"...Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize **any** and **all property** unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant." U.S. v Monsanto, 491 U.S. 600, 607-611*

*Section 853's **language is plain and unambiguous. Congress could not have chosen stronger words to express its intent** that forfeiture be mandatory than § 853(a)'s language that upon conviction a person "shall forfeit . . . **any property**" and that the sentencing court "shall order" a forfeiture. **Likewise, the statute provides a broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included.** Every Court of Appeals that has finally passed on this argument has agreed with this view. **Neither the Act's legislative history nor legislators' post-enactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees, or because Congress simply did not consider the prospect that forfeiture [491 U.S. 601] would reach such property. . . . Moreover, respondent's admonition that courts should construe statutes to avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language.** Pg. 606-611."*[5]

*"In determining the scope of a statute, we look first to its language." United States v. Turkette, 452 U.S. 576, 580 (1981). **In the case before us, the language of § 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees — or anything else, for that matter.***

*As observed above, § 853(a) provides that a person convicted of the offenses charged in respondent's indictment **"shall forfeit . . . any property"** that was derived from the commission of these offenses. After setting out this rule, § 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of all property described in § 853(a). **Congress could not have chosen stronger words to express its intent** that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. **Likewise, the statute provides***

[5] *U.S. v. Monsanto*, 491 U.S. 600 (syllabus) (1989)

a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities." 21 U.S.C. § 853(b) (1982 ed., Supp.V). Nothing in this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning.

Nor are we alone in concluding that the statute is unambiguous in failing to exclude assets that could be used to pay an attorney from its definition of forfeitable property. This argument, advanced by respondent here, see Brief for Respondent 12-19, has been unanimously rejected by every Court of Appeals that has finally passed on it, as it was by the Second Circuit panel below, see 836 F.2d at 78-80; id. at 85-86 (Oakes, J., dissenting); even the judges who concurred on statutory grounds in the en banc decision did not accept this position, see 852 F.2d at 1405-1410 (Winter, J., concurring). We note also that the Brief for American Bar Association as Amicus Curiae 6, frankly admits that the statute "on [its] face, broadly coverts] all property derived from alleged criminal activity and contain[s] no specific exemption for property used to pay bona fide attorneys' fees."

Respondent urges us, nonetheless, to interpret the statute to exclude such property for several reasons. Principally, respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees ... In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. But this proves nothing[.] The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "'does not demonstrate ambiguity'" in the statute: "'It demonstrates breadth.'" Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985) (quoting Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (CA7 1984)). The statutory provision at issue here is broad and unambiguous, and Congress' failure to supplement § 853(a)'s comprehensive phrase — "any property" — with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language."[6]

"As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, United States v. Price, 361 U.S. 304, 313 (1960); instead, Congress' intent is "best determined by [looking to] the statutory language that it chooses," Sedima, S.P.R.L., supra, at 495, n.13. . . . Finally, respondent urges us, see Brief for Respondent 2029, to invoke a variety of general canons of statutory construction, as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, e.g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council, 485 U.S. 568, 575 (1988); NLRB. v. Catholic Bishop of Chicago, 440 U.S. 490, 500 (1979). We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the

[6] *Monsanto, Id*, at 607-09.

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judiciary to rewrite language enacted by the legislature." *United States v. Albertini, 472 U.S. 675, 680 (1985).* ***Here, the language is clear and the statute comprehensive; § 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions."*** [7]

34. Since the 1989 Monsanto decision regarding "any property," three very recent decisions deal directly with the same question as to how to interpret the term "any"; is it all inclusive or subject to derogation? The inclusion here of lengthy excerpts is intended to offer appreciable input upon the topic.

35. **2002** - *Rucker* (citing *Monsanto* and *Gonzales in summary)* - U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is scene of prohibited behavior.

36. Here, in this unanimous 2002 decision (REHNQUIST, C. J. delivered opinion, BEYER, J. took no part) in the Department of *Housing and Urban Renewal v. Rucker*, the Supreme Court draws upon *Monsanto* for guidance in another instance hinged upon interpretation of the term "any," affirming the claim made herein.

"That this is so seems ***evident from the plain language of the statute.*** *It provides that –*

> *each public housing authority shall utilize leases which ... provide that ... any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.*

42 U.S.C. § 1437d(1)(6) (1994 Ed., Supp.V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. ***Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement.*** *See United States v. Monsanto, 491 U.S. 600, 609 (1989).* ***As we have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of*** *whatever kind:'"* *United States v. Gonzales, 520 U.S. 1, 5 (1997). Thus, drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew or should have known about."* [8]

37. **1997** - *Gonzales (In summary)* - U.S. argues successfully that ***"any"*** in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, argues for more jail time and gets it. More jail time for convict.

38. Below is an excerpt from *U.S. v. Gonzales,* 520 U.S. 1, 4-6 (1997) just cited in *Dept. of Housing & Urban Renewal v. Rucker, Id..*

"Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:

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[7] *Monsanto, Id,* at 610-11

[8] *Department of Housing and Urban Renewal v. Rucker,* 535 U.S. 125, 130-31 (2002)

> *Whoever, during and in relation to any...drug trafficking crime...for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime..., be sentenced to imprisonment for five years... Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the...drug trafficking crime in which the firearm was used or carried.*

18 U.S.C. § 924(c)(1) (emphasis added). The question we face is whether the phrase "any other term of imprisonment" "means what it says, or whether it should be limited to some subset" of prison sentences, Maine v. Thiboutot, 448 U.S. 1, 4 (1980) -- namely, only federal sentences. ***Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately*** *of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts. Cf. United States v. Alvarez-Sanchez, 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement office?" includes "federal, state, or local" officers); Collector v. Hubbard, 12 Wall. 1, 15 (1871)* ***(stating "it is quite clear" that a statute prohibiting the filing of suit "in any court" "includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words 'in any court' are not used in their ordinary sense").*** *There is no basis in the text for limiting § 924(c) to federal sentences.*

In his dissenting opinion, JUSTICE STEVENS suggests that the word "any" as used in the first sentence of § 924(c) "unquestionably has the meaning 'any federal.'" Post at 14. In that first sentence, however, Congress explicitly limited the scope of the phrase "any crime of violence or drug trafficking crime" to those "for which [a defendant) may be prosecuted in a court of the United States." Given that Congress expressly limited the phrase "any crime" to only federal crimes, we find it significant that no similar restriction modifies the phrase "any other term of imprisonment," which appears only two sentences later and is at issue in this case. See Russello v. United States, 464 U.S. 16, 23 (1983) ("'Where ***Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").***

The Court of Appeals also found ambiguity in Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive sentences. 65 F.3d at 820. Unlike the lower court, however, we see nothing remarkable (much less ambiguous) about Congress' choice of words. Because consecutive and concurrent sentences are exact opposites, Congress implicitly required one when it prohibited the other. This "ambiguity" is, in any event, beside the point, because this phraseology has no bearing on whether Congress meant § 924(c) sentences to run consecutively only to other federal terms of imprisonment.

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Given the straightforward statutory command, there is no reason to resort to legislative history. *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254 (1992). Indeed, far from clarifying the statute, the legislative history only muddies the waters. The excerpt from the Senate Report accompanying the 1984 amendment to § 924(c), relied upon by the Court of Appeals, reads:*

> *[T]he Committee intends that the mandatory sentence under the revised subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense.*

S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year prison term for his firearms conviction before any other sentences. ***This added requirement, however, is "in no way anchored in the text of the statute."*** *Shannon v. United States, 512 U.S. 573, 583 (1994).*[9]

39. **1994** – *Alvarez (In summary)* - U.S. argues successfully that, **because statute expressly provides for an exception to** "any," that it is not all inclusive, that a "delay" should not preclude a criminal defendant's confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant.

> *"Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection.* ***In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "any" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers.***
>
> ***We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute."*** [10]

40. Thus it can be seen that any rendition of the term "any property" which does not include ALL PROPERTY is inconsistent with the four cases cited above wherein the DOJ argued successfully that "any property" means all inclusively, ALL PROPERTY. There is no basis in law or statutory construction which allows the Secretary to exclude the value of labor from the term "any property" when Congress has not done so. The Secretary, in the Treasury Regulations, makes it clear that the cost is the value of "any money or property" and the Secretary by said regulations makes it clear that the value of labor cannot be excluded.

41. Moreover, the law and the regulations govern what the Secretary or his alleged Delegates can do with regard to the calculation of "Gross Income" as previously cited in 26 USC §§ 83(a), 212, 1001, 1011, and 1012.

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[9] *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997)

[10] *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994)

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*"The regulations...now govern, and will continue to govern, the abbreviated application process. See Fort Stewart Schools v. FLRA, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990). **No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them.**" Schering Corp. v. Shalala, 995 F.2d 1103 (D.C.Cir. 1993)*

42. It is certain that 26 USC § 83(a) applies to the calculation of an individual's compensation for labor the "excess" of which is to be included in "Gross Income", as can be seen from the following Court rulings:

*Montelepre Systemed, Inc. v. C.I.R., 956 F.2d 496, 498 at [1] (CA5 1992): "**Section 83(a) explains how property received in exchange for services is taxed.**"*

*MacNaughton v. C.I.R., 888 F.2d 418, 421 (CA6 1989): "The Alves court stated that the plain language of section 83 belied this argument because the "**statute applied to all property transferred in connection with the performance of services**" and because no reference is made to the term "compensation." Id. The court further concluded in Alves that "if Congress had intended section 83(a) to apply solely to restricted stock used to compensate employees, it could have used much narrower language." Id. at 481-82. Upon consideration, **we agree with the interpretation advanced by the Alves court and, therefore, join the Ninth Circuit in holding that section 83 is not limited to stock transfers** which are compensatory in nature."*

*Pledger v. C.I.R., 641 F.2d 287, 293 (CA5 1981): "The taxing scheme imposed by Congress more **accurately reflects what taxpayer received as compensation** than a scheme that taxes the taxpayer on merely a portion of the compensation."*

*Alves v. C.I.R., 734 F.2d 478, 481 (CA9 1984): "The plain language of section 83(a) belies Alve's argument. **Section 83(a) applies to all property transferred in connection with the performance of services.** No reference is made to the term "compensation." Nor is there any statutory requirement that property have a fair market value in excess of the amount paid at the time of transfer. Indeed, **if Congress had intended section 83(a) to apply solely to restricted stock used to compensate its employees, it could have used much narrower language.** Indeed, Congress made section 83(a) applicable to all restricted "property," not just stock; to property transferred to "any person," not just to employees; and **to property transferred "in connection with . . . services," not just compensation for employment.** See Cohn v. Commissioner, 73 USTC 443, 446-47 (1979)."*

*Klingler Electric Co. v. C.I.R., 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991): "**Section 83(a) applies to all property transferred in connection with the performance of services.**"*

*Robinson v. C.I.R., 82 USTC 444, 459 (1984); The legislative history of section 83 does not require the conclusion that the statute should be applied to tax-avoidance techniques only. To the contrary, the House and Senate reports specifically delineate transactions and transfers to which section 83 was not to apply and **do not exclude from its purview contractual provisions that were not tax motivated.**"*

*Cohn v. C.I.R., 73 USTC 443, 446 (1979): "Petitioners rest their entire case on the proposition that Elovich and Cohn and/or Mega were "independent contractors" and not employees of the Integrated and that, therefore, section 83 does not apply to the acquisition of the shares from Integrated. They rely on the legislative history surrounding the statute to support their proposition that section 83 was intended to apply only to restricted stock transferred to employees. **Respondent contends that the words "any person" in section***

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83(a) encompass independent contractors as well as employees. We agree with Respondent. . . . We reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, the language of the section covers the transfer of any property transferred in connection with the performance of services "to any person other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that Congress was aware that the statute's coverage extended beyond restricted stock plans for employees. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. The regulations state that that section 83 applies to employees and independent contractors (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances, these regulations are not "unreasonably and plainly inconsistent with the revenue statutes." Consequently, they are sustained. (cites omitted)"

Concurring with Cohn, Alves, see Centel Communications Co. v. CIR, 920 F.2d 1335, 1342 (CA7 1990). Annotations / Public Law

43. No Federal and/or STATE 1040 type returns, forms, schedules or worksheets accommodate § 83(a) in any way and therefore it is not possible for any Citizen or Tax Professional to complete a Federal and/or STATE 1040 type return and claim the rightful deductions for the value of one's labor as articulated by Congress in § 83(a). There are no federal and/or STATE returns, forms, schedules or worksheets which will assist any Citizen or Tax Professional to determine the amount of the "excess" which is the ONLY amount to be include in "Gross Income," pursuant to 26 USC § 83(a). All returns, forms, schedules and worksheets incorrectly assume that all compensation is included in "Gross Income" which is contrary to law and a violation of the Citizen's rights as articulated by Congress in § 83(a).

44. Anyone who reads this brief has been duly noticed hereby and anyone who thereafter denies a Citizen any of these rights for the purpose of converting them into a "taxpayer" or to exact amounts from them in excess of that which is provided by law (§ 83(a) included), is engaged in criminal conversion and United States law mandates that any associated Tax Professional or said Citizen, who is denied said rights, file a criminal complaint, pursuant to 18 USC § 4, against all who have participated in said criminal conversion for said violations of the law and denials.

45. Under law, to tax the FMV of services actually rendered, one must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-3(g)) embraces the FMV of labor as a cost ("***value of any money or property paid***"), despite the fact that it is property within which one has no basis. Property within which one has no basis is not excluded from cost under the law.

46. The IRS and the State exclude from cost one's services merely upon the fact that it is property within which one has no basis, but such exclusion is unauthorized under provisions which embrace ALL property as a cost. The IRS and the State must violate §§ 83, 212, 1001, 1011, and 1012 by not restoring the "adjusted basis" and allowing only the amount that remains ("excess") thereafter to be taxed as "realized gain," as required under 26 CFR 1.1001-1(a). To report as gross income the value of personal services the Petitioner must enter a false statement on a 1040 type return in violation of 18 USC § 1001.

Questions relative to the IRC § 83(a) issue:

47. Since § 83(a) is applicable to amounts now sought to be included in gross income, it is clear that someone is in violation of the law, but silence abounds. Does it apply, and, if so, how does it operate and how is the one to comply with § 83(a) in the future?

48. Where, under §§ 83 and 1012, and 26 CFR 1.83-3(g), does it provide that only property within which one has a basis is to be recognized as a cost or, that intangible personal property is excluded from that which is cost?

49. If such exclusions alluded to in # 48 above do not exist, can "income tax" approach such property's FMV, as contemplated under §83(a) and the regulations thereunder?

50. In consideration of these provisions, is the FMV of labor (contract value) appropriately termed "gain derived from labor"?

51. Is the FMV of labor excluded from gross income by law? (See § 83, 212, 1001, 1012; 26 CFR 1.83-3(g)). If so, by what authority?

52. Can a Court order the exclusion from cost of property within which one has no basis when such exception to cost cannot be found in statute or in regulation, especially when it constitutes the difference between paying a tax and not even being subject to it?

53. Can the United States claim in one case that "any property" means <u>all</u> property and in another case argue that "any property" lawfully excludes certain things not recorded, mentioned, or manifest in law?

54. Would such accounting offend the holdings in *Monsanto*, *Gonzales*, *Alvarez*, and *Rucker*? If not, upon what basis in law can it not be so offended?

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