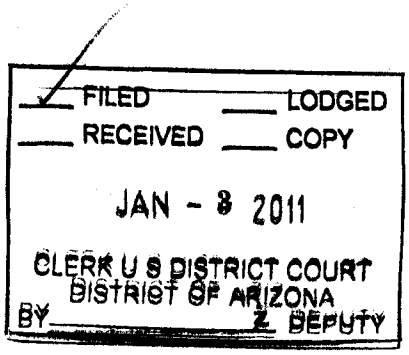
Janice Sue Taylor
3341 Arianna Ct
Near Gilbert, Arizona
Mailing address of convenience
Not a claimed residence or domicile



IN THE UNITED STATES DISTRICT COURT

PHOENIX, ARIZONA

UNITED STATES OF AMERICA, Alleged Plaintiff, vs. Janice Sue Taylor, Alleged Defendant,	) No. **CR-10-00400-PHX-MHM**)) Defendant's Motion to Dismiss for lack) of *in personam* jurisdiction; statutory) scope of 26 USC.)) No oral arguments, memorandum requested.)

I. INTRODUCTION & RELIEF.

1.1 COMES NOW, the above named Alleged Defendant, with a full reservation of rights not expressly waived, seeking specific relief in the form of dismissal of charges under 26 USC and charges derived therefrom for lack of *in personam* jurisdiction. This challenge is solidly based upon governing statutes and is supported by the highest of authorities prescribing the standards of interpretation rightfully observed as maxims of American jurisprudence.

1.2 The Plaintiff and its courts find enormous disfavor in any private challenge to the standard operating procedures of the IRS and the DOJ under 26 USC, regardless of how correct any such challenger may be; this is one such challenge. This controversy and any perceptions that this motion is verbose or rambling are entirely the fault of the Plaintiff which chose to implement a twenty seven plus pound stack of rice paper and to refuse to speak of its operation. The Defendant's offer of proof filed October 7, 2010 (motion to dismiss, affidavit of joinder,

Congressional complaint of Dec. 28, 2005) is incorporated by this reference as if fully restated herein. ***Any and all emphasis*** employed herein may be construed to have been added.

1.3 This Court can already see that the Plaintiff's interpretation of 26 USC § 83(a) relies upon an impermissible arbitrary exclusion of the value of the Alleged Defendant's personal services from "the value of any money or property paid" identified as separate from gross income by 26 CFR 1.83-3(g). This Court observes that the Plaintiff's reply to the Alleged Defendant's motion relating to such does not cite *Talmage v. C.I.R.* which is the answer to the challenge because it articulates the arbitrary nature of the Plaintiff's interpretation of 26 USC § 83(a).

1.4 This challenge to jurisdiction is made without the scope of 26 USC as an allegation of a lack of statutory authority akin to *FDA v. Brown & Williamson Tobacco Co.*, *infra*, that substantial authority is derived through the promulgation of regulation with terms not provided for or allowed by statutes the regulations purportedly seek to implement.

1.5 In criminal tax cases and in IRS publications [1] the Plaintiff cites 26 CFR 1.1-1 as an authority making 26 USC relevant to Americans in the fifty freely associated compact states. ("countries," see 28 USC 197). The Alleged Defendant most certainly is not subject to provisions governed by the statutory definition of "citizen" found in 26 USC §§ 1402(b), 3121(e), and in 3306(j). This leaves only 26 USC ch. 1 (§§ 1-1399) which has no statutory definition of "citizen."

1.6 Until 26 CFR 1.1-1 was *promulgated* there was nothing in the scope of 26 USC which vaguely implicated the political status (citizenship) of the Alleged Defendant. This explains why the Plaintiff (Sec. of the U.S. Treasury) cannot answer to Congress under 4 USC § 72. To proceed to lay and collect an income tax on this foundation violated the 16th Amdt. to the U.S. Constitution which provides that such taxes shall be imposed by Congress.

1.7 Where, in this, did the Alleged Defendant claim to be a "nonresident alien" to anything? The Plaintiff's counselors and Anchorage, AK U.S. Dist. Court Sr. judge, R. Biestline, say on the record (*infra*) that when one claims to be a "citizen of the United States"

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[1] See **Ex.B hereto**, IRS frivolous arguments list 2007.

as the Plaintiff alleges, it is a claim to be the Wesley Snipes "nonresident alien" to something which remains unidentified that results in prison.

"I'm an American implicated by regulation alone."
Plaintiff and its courts calls this: "I am a nonresident alien."

1.8 This Court will agree to protect the Plaintiff and its revenue streams while utterly unable to do what courts sit to do; the right thing. This Court's ruling will be that Americans are described by Congress in 26 USC §§ 1402(b), 3121(e), and 3306(j), and these statutory definitions identify the same citizen identified by 26 CFR 1.1-1, that Americans owe all of these taxes via the application of clear language. Whatever this Court contrives or endorses as its offering to this plain framework of challenge, it is asked herein to find a way for the average individual to have perceived such a contrivance as the clear answer, so due process is not defeated by the prosecution of the Alleged Defendant when such a contrivance, however convoluted, is held out to the Public as clear language.

1.9 If this Court does not rule as the *Warner* court ruled (*infra*), that the Alleged Defendant is claiming to be a nonresident alien when claiming to be a "citizen of the United States of America," any such ruling against this motion shows that more than one answer to the same legal question exists; void for vagueness. Exhibits to this motion are as follows:

Exhibit F: *U.S. v. Hirmer*, (indictment) #3:08cr79-011-MCR, ND Florida, at Pensacola.

Exhibit G: IRS frivolous arguments list 2007.

Exhibit C: *McKee v. Commissioner*, #04-74846, 9th Cir., filed Dec. 4, 2006.

1.10 Americans have the right to demand at every turn **that 1)** public servants on every level honor precedent, and they observe **that 2)** "[E]ach section of the Internal Revenue Code is not a self contained whole, but rather a building block of a complex, interrelated statute." (See *Raymond v. Hartman*, 65 TC 542, 545 (1975)).

II. AUTHORITIES.

2.1 A substantial body of case supports the maxims and standards which form the approach to the provisions relied upon herein as a statutory challenge. Excerpts are lengthy to preserve context of the rulings relied upon.

> "But precedent also serves a very different function in the federal courts today, one related to the horizontal and vertical organization of those courts. See *John Harrison,* The Power of Congress Over The Rules of Precedent, 50 Duke L.J. 503 (2000). ***A district judge may not respectfully*** (or disrespectfully) ***disagree with his learned colleagues on his own court of appeals who have ruled on a controlling legal issue, or with Supreme Court Justices writing for a majority of the Court.*** ([2] /fn.24) ***Binding authority within this regime cannot be considered and cast aside; it is not merely evidence of what the law is***. Rather, case law on point *is* the law. ***If a court must decide an issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the same result, even if it considers the rule unwise or incorrect. Binding authority must be followed unless and until overruled by a body competent to do so***.
>
> In determining whether it is bound by an earlier decision, a court considers not merely the "reason and spirit of cases" but also "the letter of particular precedents." *Fisher v. Prince*, 97 Eng. Rep. 876, 876 (K.B. 1762). ***This includes not only the rule announced, but also the facts giving rise to the dispute, other rules considered and rejected and the views expressed in response to any dissent or concurrence.*** ([3] /fn.25)

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[2] The same practice is followed in the state courts as well. See, *e.g., Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*, 369 P.2d 937, 940 (Cal. 1962) ("Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.").

[3] For example, in *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985), a majority held that the rule announced in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) (plaintiff must show "actual malice" to obtain punitive damages for false and defamatory statements), applies only to statements involving matters of public concern. Relying on the language and context of *Gertz*, the Court rejected the dissenters' claim that the *Gertz* rule applied to all defamatory statements, and instead concluded that *Gertz* left it an open question whether the rule applied to statements not of public concern. *Compare Dun & Bradstreet*, 472 U.S. at 757 n.4 ("The dissent states that ' [a]t several points the Court in *Gertz* makes perfectly clear [that] the restrictions of presumed and punitive damages were to apply in all cases.' Given the context of *Gertz*, however, the Court could have made ' perfectly clear' only that these restrictions applied in cases involving *public speech."* (citations omitted)), *with* id. at 785 n.11 ("Distrust of placing in the courts the power to decide what speech was of public concern was precisely the rationale *Gertz* offered for rejecting [an alternative] approach. It would have been incongruous for the Court to go on to circumscribe the protection against presumed and punitive

Thus, when crafting binding authority, the precise language employed is often crucial to the contours and scope of the rule announced. ([4] /fn.26)

Obviously, binding authority is very powerful medicine. A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior courts may voice their criticisms, but follow it they must. See, *e.g., Ortega v. United States*, 861 F.2d 600, 603 & n.4 (9th Cir. 1988) ("***This case is squarely controlled by the Supreme Court' s recent decision*** . . . . [We] agree[ ] with the dissent that [appellant] deserves better treatment from our Government. ***Unfortunately, legal precedent deprives us of discretion to do equity***."). ***The same is true as to circuit authority, although it usually covers a much smaller geographic area***. ([5] /fn.27) Circuit law, a concept wholly unknown at the time of the Framing, see *Danny J. Boggs & Brian P. Brooks*, Unpublished Opinions & the Nature of Precedent, 4 Green Bag2d 17, 22 (2000), ***binds all courts within a particular circuit, including the court of appeals itself. Thus, the first panel to consider an issue sets the law not only for all the inferior courts in the circuit, but also future panels of the court of appeals***.

Once a panel resolves an issue in a precedential opinion, the matter is deemed resolved, unless overruled by the court itself sitting en banc, or by the Supreme Court. ([6] /fn.28) As *Anastasoff* itself states, ***a later three-judge panel considering a case that is controlled by the rule announced in an earlier panel's opinion has no choice but to apply the earlier-adopted rule; it may not any more disregard the earlier panel's opinion than it may disregard a ruling of the Supreme Court***. *Anastasoff*, 223 F.3d at 904; see also *Santamaria v. Horsley*, 110 F.3d 1352, 1355 (9th Cir. 1997) ("***It is settled law that one three-judge panel of this court cannot ordinarily reconsider or overrule the decision of a prior panel***."), rev'd, 133 F.2d 1242 (9th Cir.) (en banc), amended by 138 F.3d 1280 (9th Cir.), cert. denied, 525 U.S. 823-24 (1998); *Montesano v. Seafirst Commercial Corp.*, 818 F.2d 423, 425-26 (5th Cir. 1987) (A "purpose of institutional orderliness [is served] by ***our insistence that, in the absence of intervening Supreme Court precedent, one panel cannot overturn another panel, regardless of how wrong the earlier panel decision may seem to be***."). ***Designating an opinion as binding circuit authority is a weighty decision that cannot be taken lightly***, because its effects are not easily reversed. Whether done by the Supreme Court or the court of appeals

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damages by reference to a judicial judgment as to whether the speech at issue involved matters of public concern." (citation omitted)).

[4] This is consistent with the practice in our court--and all other collegial courts of which we are aware--in which the judges who join an opinion authored by another judge make substantive suggestions, often conditioning their votes on reaching agreement on mutually acceptable language.

[5] The exception is the Federal Circuit, which has a geographic area precisely the same as the Supreme Court, but much narrower subject-matter jurisdiction. See 28 U.S.C. § 1295(a).

[6] Or, unless Congress changes the law. See, *e.g., Van Tran v. Lindsey*, 212 F.3d 1143, 1149 (9th Cir.) (earlier case law established that mixed questions in habeas petitions were reviewed de novo, but under the Anti-Terrorism and Effective Death Penalty Act of 1996, the standard of review is governed by 28 U.S.C. § 2254(d)), *cert. denied*, 531 U.S. 944 (2000).

through its "unwieldy" and time-consuming en banc procedures, Richard A. Posner, *The Federal Courts: Crisis and Reform* 101 (1985), ([7] /fn.29) overruling such authority requires a substantial amount of courts' time and attention--two commodities already in very short supply.

Controlling authority has much in common with persuasive authority. ***Using the techniques developed at common law, a court confronted with apparently controlling authority must parse the precedent in light of the facts presented and the rule announced.*** Insofar as there may be factual differences between the current case and the earlier one, ***the court must determine whether those differences are material to the application of the rule or allow the precedent to be distinguished on a principled basis.*** Courts occasionally must reconcile seemingly inconsistent precedents and determine whether the current case is closer to one or the other of the earlier opinions. See, *e.g., Mont. Chamber of Commerce v. Argenbright*, 226 F.3d 1049, 1057 (9th Cir. 2000)."

See *Hart v. Massanari*, 255 F.3d 1155 (CA9 2001).

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[7] An impressive array of judges and academics have noted the rigors of en banc procedures. *See Richard S. Arnold,* Why Judges Don' t Like Petitions for Rehearing, 3 J. App. Prac. & Process 29, 37 (2001) ("[O]n many days, I confess, I find myself wishing that there were no such thing [as en banc rehearing]."); Pamela Ann Rymer, *How Big Is Too Big?*, 15 J.L. & Pol. 383, 392 (1999) ("expensive and time consuming"); Joseph T. Sneed, *The Judging Cycle: Federal Circuit Court Style*, 57 Ohio St. L.J. 939, 942 (1996) ("time consuming and complex"); James Oakes, Personal Reflections on Learned Hand and the Second Circuit, 47 Stan. L. Rev. 387, 393 (1995) ("enormously time-consuming and expensive"); Deanell Reece Tacha, *The "C" Word: On Collegiality*, 56 Ohio St. L.J. 585, 590 (1995) ("time-consuming and expensive"); Irving R. Kaufman, Do the Costs of the En Banc Proceeding Outweigh Its Advantages?, 69 Judicature 7, 7 (1985) ("the most time consuming and inefficient device in the appellate judiciary' s repertoire"); J. Woodford Howard, Jr., Courts of Appeals in the Federal Judicial System: A Study of the Second, Fifth, and District of Columbia Circuits 217 (1981) ("most circuit judges regard en bancs as a 'damned nuisance' "). Because they are so cumbersome, en banc procedures are seldom used merely to correct the errors of individual panels: "[W]e do not take cases en banc merely because of disagreement with a panel' s decision, or rather a piece of a decision . . . . We take cases en banc to answer questions of general importance likely to recur, or to resolve intracircuit conflicts, or to address issues of transcendent public significance--perhaps even to curb a ' runaway' panel--but not just to review a panel opinion for error, even in cases that particularly agitate judges . . . ." *EEOC v. Ind. Bell Tel. Co.*, 86 Fair Empl. Prac. Cas. (BNA) 1, 2001 WL 717685, at *11 (7th Cir. 2001) (en banc) (Posner, J., concurring). *See also* Fed. R. App. P. 35(a) ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court' s decisions; or (2) the proceeding involves a question of exceptional importance."); Arnold, *supra*, at 36 ("Petitions for rehearing are generally denied unless something of unusual importance--such as a life--is at stake, or a real and significant error was made by the original panel, or there is conflict within the circuit on a point of law.") It is therefore very important that three-judge panel opinions be decided correctly and that they state their holdings in a way that is easily understood and applied in future cases.

2.2 HOWEVER, in the instance of any legal issue or individual which the United States deems an *undesirable* one, perhaps one which exposes a wrongful but systemic taking under the *status quo*, or perhaps which aids a "tax protestor," American courts find a way to prevent the operation of the law providing the argued protections or constraints. In February 25, 2005, at a Duke University School of Law Forum, now Supreme Court Justice, Sonya Sotomayor, described such conduct as follows:

> Sonia Sotomayor: "I -- from my answer earlier, I don't -- doing either is going to get you a whole lot, so you don't make a mistake in whatever choice you make. But there is a choice. ***The law is that if you're going into academia, you're going to teach***, or as Judge Lucero just said, ***public interest law***, all of the legal defense funds out there, they're ***looking for people with court of appeals experience, because it is -- court of appeals is where policy is made. And I know -- and I know this is on tape and I should never say that because we don't make law, I know. OK, I know. I'm not promoting it, and I'm not advocating it, I'm -- you know.*** [audience laughter] ***OK. Having said that, the court of appeals is where, before the Supreme Court makes the final decision, the law is percolating -- its interpretation, its application***. And Judge Lucero is right. I often explain to people, when you're on the district court, you're looking to do justice in the individual case. ***So you are looking much more to the facts of the case than you are to the application of the law because the application of the law is non-precedential, so the facts control***. On the court of appeals, you are looking to ***how the law is developing***, so that it will then be applied to a broad class of cases. And so you're always thinking about the ramifications of this ruling on ***the next step in the development of the law***. You can make a choice and say, "I don't care about the next step," and sometimes we do. Or sometimes we say, "We'll worry about that when we get to it" -- look at what the Supreme Court just did. But the point is that that's the differences -- the practical differences in the two experiences are the district court is controlled chaos and not so controlled most of the time. You are jumping from one project to another at a million miles an hour on a given day. I explained to one on my friends that after a day in the district court, I actually didn't have a headache, I had a head strain. My brain in my first year felt that it had expanded past its capacity as a muscle to stretch. There was so much influx of information and new knowledge that I literally had a headache."

And this is how U.S. Tax Court does it:

> "...The logical force requiring rejection of their arguments-apart from their ***assertions of personal political philosophy which do not provide a basis for us, a Court sitting to interpret the law***, to decide the questions dispositive of this case..." See *Rowlee v.*

C.I.R., 80 USTC 1111, 1120 (**1983**), quoting *Reading v. C.I.R.*, 70 TC 730 (1978), aff'd. 614 F.2d 159 (CA8 1980, at 173).

Compare:

"***...the pleadings do not raise a genuine issue of material fact*** respecting Respondent's determinations . . . ***but rather involve only issues of law***. (Cite omitted) Therefore .... Respondent's motion for judgment on the pleadings will be granted. . . . ***The final matter we consider is [penalties]***." See *Abrams v. C.I.R.*, 82 USTC 403, 408 (**1984**).

Which is tantamount to this:

18 USC § 2384 Seditious conspiracy.- If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or ***to oppose by force the authority thereof***, or by force to prevent, hinder, or ***delay the execution of any law of the United States***, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be ***fined under this title or imprisoned not more than twenty years, or both***.

When this, in fact, is how it is to be done, at the trial level or otherwise:

Interpretation and maxims:

"***The parties provide vastly differing interpretations of the statutory language, and both contend that the language clearly supports their position.***"

"The Commissioner's argument has considerable force, if one focuses solely on the language of sections 1281 and 1283 and divorces them from the broader statutory context. But we cannot do that. The Supreme Court has noted that, "***the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from related sections, or if the mind be isolated from the history of the income tax legislation of which it is an integral part.***" (Cite omitted) According to the Court, the construing court's duty is "***to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested.***'" (Cite omitted) The circumstances of the enactment of particular legislation may be particular relevant to this inquiry. (Cite omitted) ***Finally, when there is reasonable doubt about the meaning of a revenue statute, the doubt is resolved in favor of those taxed.*** (Cite omitted)

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As in all cases of statutory interpretation, ***we must start with the text of the statute.*** But we cannot simply focus on sections 1281 through 1283 because they do not exist in a vacuum. ***Rather, we must consider the context provided by the more general statutory scheme of which [they] are a part.*** " [8]

"Thus, the statutory scheme into which [the provisions] fit shows a concern with the treatment of discounted obligations. ***We find no mention*** in this scheme of the treatment of bank loans made in the ordinary course of business. Given this context, we would expect that if Congress initially covered loans without discount, as the commissioner contends, ***it would provide language*** clearly stating such an intention. We next examine the statutory text to see if it contains such a clear statement.

We conclude that the statutory text does not clearly cover obligations containing only stated interest. First, nothing in either the sections at issue or in the broader statutory scheme specifically refers to loans [of that type].

Second, we conclude that the actual text of the provisions is ambiguous with regard to whether such obligations are covered." [9]

"We are not convinced that the language is as clear as the Commissioner contends." [10]

"An examination of the statutory context, ***the text of the relevant provisions***, and the legislative history convinces us that the construction that is "most harmonious with its scheme and with the general purposes that Congress manifested." (Cite omitted) Moreover, because the application of [the provision] to these loans is ambiguous, we follow the venerable rule that "[i]n the interpretation of statutes levying taxes . . . ***[courts must not] enlarge their operation so as to embrace matters not specifically pointed out***. In case of doubt they are construed most strongly against the government."

"'I respectfully dissent. If the [statutory] intent of Congress is clear, that is the end of the matter.' *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984)." [11]

2.3 "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the court is to enforce it according to its terms. *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *United States v. Lexington Mill and Elevator*

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[8] See *Security Bank of Minnesota v. Commissioner of IRS*, 994 F.2d 432, 435-36 (CA8 1993).
[9] *Id.*, at 437.
[10] *Id.*, at 438.
[11] *Id.*, at 441.

Co., 232 U.S. 399, 409; *United States v. Bank*, 234 U.S. 245, 258." [12] On state and federal levels, strict construction and hewing to the law with indifference is a mandate and axiom.

2.4 While executive branch officials may enjoy various delegations of regulatory authority, it is Congress' enactments within which those officials must stay when promulgating regulations. (See *Brown & Williamson v. F.D.A.*, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 U.S. 120 (2000) (FDA stripped of tobacco enforcement authority for lack of statutory basis)). Regulation cannot deviate from statute or it is void. The Secretary of the Treasury is bound by statute. Congressional intent is the deciding factor in considering the validity of a regulation. [13] What does not exist in regulation or statute does not exist at all. [14]

2.5 As directed by *Brown v. FDA*, *supra*, and by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), we employ the traditional tools of statutory construction to ascertain congressional intent regarding whether it intended to embrace as subject to 26 USC, chapters one, two, twenty one, and/or twenty four, the Alleged Defendant who is an American, a inhabitant of one of the fifty freely associated compact states. This is a very specific and certain political status (26 CFR 1.1-1(c)) hereby claimed by the Alleged Defendant for the purposes of 26 USC.

2.6 We begin with the basic proposition that agency power is "not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect ***the will of Congress as expressed by the statute***.' "*Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1976) (quoting *Manhattan Gen. Equip. Co. v. Commission*, 297 U.S. 129, 134 (1936)). "[I]t [is] the judiciary's

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[12] See *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916).

[13] See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *U.S. v. Larinoff*, 431 U.S. 864, 872-873 (1976); *U.S. v. Calamaro*, 354 U.S. 351, 359 (1956); *Koshland v. Helvering*, 298 U.S. 441, 446-447 (1936); *Manhattan General Equip. Co. v. C.I.R.*, 297 U.S. 129, 134, 54 S.Ct. 397, 399 (1936); *Tracy v. Swartout*, 10 Pet. 354, 359 (1836).

[14] See *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916), citing (on 485) *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *U.S. v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *U.S. v. Bank*, 234 U.S. 245, 258; *Security Bank of Minnesota v. C.I.R.*, 994 F.2d 432, 436 (CA8 1993); *Washington Red Raspberry Comm'n v. U.S.*, 657 F.Supp. 537, 545 (1987); *Forging Industry Ass'n v. Secretary of Labor*, 748 F.2d 211, 213 (1984); *Community for Creative Non-violence v. Kerrigan*, 865 F.2d 382, 387-91 (1988); *Iglesias v. U.S.*, 848 F.2d 362, 367 (CA2 1988); *Bank of New York v. U.S.*, 471 F.2d 247, 250 (CA8 1973); *Fidelity Philadelphia Trust Co. v. U.S.*, 122 F.Supp. 551, 553 at [3,4].

duty "to say what the law is." *Marbury v. Madison*, 1 Cranch. 137, 177 (1803) (Marshal, C.J.)." [15] Thus, our initial inquiry is whether Congress intended to subject the Alleged Defendant to the 26 USC income taxes. (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations ***is limited to the authority delegated by Congress***"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them")).

2.7 Under *Chevron*, and *Brown*, we first consider the intent of Congress because "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." See *Chevron*, 467 U.S. at 842-43. It is only if the intent of Congress is ambiguous that we defer to a permissible interpretation by the agency. *Chevron*, 467 U.S. at 843.

2.8 The starting point in every case involving construction of a statute is the language of the statute itself. (See *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver*, N.A., 511 U.S. 164, 173-175 (1994)).

Statutory definitions and the maxim of *expressio unius est exclusio alterius*.

2.9 Alleged Defendant is basing her claims on statute alone, confining her conclusions to those supported by the application of well settled and accepted canons of statutory construction. Congress' failure to identify the Alleged Defendant in statutory definitions is therefore interpreted as legislative intent that she not be a subject of the statutory scheme upon which the definition is said to operate. Because tax statutes are to be strictly construed, the maxim of *expressio unius est exclusio alterius* is an appropriate interpretive guide. (See maxim applied in *Tennesee Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978); *Passenger Corp. v. Passengers Assoc.*, 414 U.S. 453, 458 (1974); *Bingler v. Johnson*, 394 U.S. 741, 749 (1969);

[15] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

Evans v. Newton, 382 U.S. 296, 311 (1966); *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373, 375 (1958)).

2.10 Alleged Defendant is challenging the statutory authority of the Plaintiff, and does so with statutory definitions. A "definition" by its terms excludes non-essential elements by mentioning only those things to which it shall apply.

> "**Define**. To explain or ***state the exact meaning*** of words and phrases; to state explicitly; ***to limit***; to determine essential qualities of; to determine ***the precise signification*** of; to settle; to establish or prescribe authoritatively; to make clear. (Cite omitted)"
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> "To "define" with respect to space, means to set or establish its boundaries authoritatively; to ***mark the limits*** of; to determine with precision or exhibit clearly the boundaries of; to ***determine the end or limit***; to fix or ***establish the limits***. It is the equivalent to declare, fix or establish.
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> "**Definition**. A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, ***including all essential elements and excluding all nonessential***, as ***to distinguish it from all other things*** and classes." [16]

2.11 Therefore, a statutory definition's failure to mention the person of the Alleged Defendant as the subject of a tax when it defines "citizen," or as the "person" in penal statutes, excludes the Alleged Defendant from the entire statutory scheme to which such definition is said to apply.

2.12 When a court is confronted with a challenge based on statutory definitions the Supreme Court is clear in its prescription that the specific terms of such a definition must be "met" to trigger applicability of its related statutes to any particular act, person (natural or otherwise), or thing.

> "***Metropolitan was subject*** to Title VII, however, ***only if, at the time of the alleged retaliation, it met the statutory definition of "employer," to wit***: "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar

[16] See *Black's*, 6th Edition, "define" and "definition."

year." 42 U.S.C. Section(s) 2000e(b). . . . ***Statutes must be interpreted, if possible, to give each word some operative effect.***" [17]

". . . Thus, ***Congress did not reach every transaction*** in which an investor actually relies on inside information. ***A person avoids liability if he does not meet the statutory definition of an "insider***[.]" [18]

"On its face, this is an attractive argument. ***Petitioner urges that, in view of the severity of the result flowing from a denial of suspension of deportation, we should interpret the statute by resolving all doubts in the applicant's favor.*** Cf. *United States v. Minker*, 350 U.S. 179, 187-188. ***But we must adopt the plain meaning of a statute, however severe the consequences***. Cf. *Galvan v. Press*, 347 U.S. 522, 528." [19]

"***The wording of the federal statute plainly places the incidence of the tax upon the "producer," that is, by definition, upon federally licensed distributors of gasoline such as petitioner. . . . The congressional purpose to lay the tax on the "producer" and only upon the "producer" could not be more plainly revealed.*** Persuasive also that such was Congress' purpose is the fact that, if the producer does not pay the tax, the Government cannot collect it from his vendees; ***the statute has no provision making the vendee liable for its payment.*** *First Agricultural Nat. Bank v. Tax Comm'n, supra,* at 347." [20]

"***A purpose*** to subject aliens, much less citizens, to ***a police practice so dangerous to individual liberty as this*** should not be read into an Act of Congress ***in the absence of a clear and unequivocal congressional mandate***. I think the Act relied on here by the Department of Justice should not be so read. ***I would hold that immigration officers are wholly without statutory authority to summon persons***, whether suspects or not, ***to testify in private as "witnesses" in denaturalization matters***. For this reason I concur in the Court's judgment in this case." [21]

"***Conspicuously absent from § 1415(e)(3), however, is any emergency exception for dangerous students. This absence is all the more telling in light of the injunctive decree*** issued in *PARC*, which permitted school officials unilaterally to remove students in "'extraordinary circumstances.'" 343 F.Supp. at 301. Given the lack of any similar exception in Mills and the close attention Congress devoted to these "landmark" decisions, see S.Rep. at 6, ***we can only conclude that the omission was intentional; we***

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[17] See *Walters v. Metropolitan Enterprises, Inc. et al.*, 519 U.S. 202 (1997).
[18] See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972).
[19] See *Jay v. Boyd*, 352 U.S. 345, 357 (1956).
[20] See *Gurley v. Rhoden*, 421 U.S. 200, 205 (1975).
[21] See *U.S. v. Minker*, 350 U.S. 179, 192 (1956).

are therefore not at liberty to engraft onto the statute an exception Congress chose not to create." [22]

"***It is axiomatic that the statutory definition of the term excludes unstated meanings of that term.*** *Colautti v. Franklin*, 439 U.S. 379, 392, and n.10 (1979). Congress' use of the term "propaganda" in this statute, as indeed in other legislation, has no pejorative connotation. ***As judges, it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it. If the term "political propaganda" is construed consistently with the neutral definition contained in the text of the statute itself, the constitutional concerns voiced by the District Court completely disappear.***" [23]

"As we have explained ***with reference to the technical definition*** of "child" contained within this statute:

> With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions deny preferential status to [some] who share strong family ties. . . . But it is clear from our cases . . . that these are policy questions entrusted exclusively to the political branches of our Government, and ***we have no judicial authority to substitute our political judgment for that of the Congress.***

Fiallo v. Bell, 430 U.S. 787, 798 (1977). Thus, even if Hector's relationship with her nieces closely resembles a parent-child relationship, we are constrained to hold that ***Congress, through the plain language of the statute, precluded this functional approach*** to defining the term[.]" [24]

"***Although agencies must be "able to change to meet new conditions arising within their sphere of authority," any expansion of agency jurisdiction must come from Congress, and not the agency itself.*** 744 F.2d at 1409. Accordingly, the Court of Appeals invalidated the amended regulations." [25]

"***If Congress had intended the more circumscribed approach espoused by the Court of Appeals, there would have been some positive sign that the law was not to reach organized criminal activities that give rise to the concerns about infiltration. The language of the statute, however -- the most reliable evidence of its intent*** -- reveals that Congress opted for a far broader definition of the word "enterprise," and we are

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[22] See *Honig v. Doe*, 484 U.S. 305, 324 (1988).
[23] See *Meese v. Keene*, 481 U.S. 465, 484 (1987).
[24] See *INS v. Hector*, 479 U.S. 85, 88 (per curiam opinion) (1986).
[25] See *FRS v. Dimensional Financial Corp.*, 474 U.S. 361, 365 (1986).

unconvinced by anything in the legislative history that this definition should be given less than its full effect." [26]

"***The statutory definition of the term "statement" was intended by Congress*** to describe material that could be fairly used to impeach the testimony of a witness. ***A major purpose of the statute was to exclude from that definition various kinds of material***[.]" [27]

"Moreover, since, with the exception of the docket fee provided by 28 U.S.C. § 1923(a), ***the statutory definition of the term "costs" does not include attorney's fees, acceptance of petitioners' argument would require us to ascribe to Congress a purpose to vary the meaning of that term without either statutory language or legislative history to support the unusual construction.*** . . . A judicially created compensatory remedy in addition to the express statutory remedies is inappropriate in this context." [28]

"A new § 208(a) directed the Attorney General to establish procedures permitting aliens either in the United States or at our borders to apply for "asylum." 8 U.S.C. § 1158(a). ***Under § 208(a), in order to be eligible for asylum, an alien must meet the definition of "refugee" contained in § 101(a)(42)(A), a standard that also would qualify an alien seeking to immigrate under § 207.*** Meeting the definition of "refugee," however, does not entitle the alien to asylum -- the decision to grant a particular application rests in the discretion of the Attorney General under § 208(a)." [29]

"On the face of the statute, ***the city fails to meet the definition for either term***, since the coverage formula of § 4(b) has never been applied to it. Rather, the city comes within the Act because it is part of a covered State. ***Under the plain language of the statute, then, it appears that any bailout action to exempt the city must be filed by, and seek to exempt all of, the State of Georgia.***" [30]

"***Homes that do not meet the definition may not be licensed***, and, under state law, only licensed facilities are entitled to Foster Care payments." [31]

2.13 Any American is entirely justified when ignoring any statutory scheme containing a definition which excludes them from the operation of said scheme.

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[26] See *U.S. v. Turkette*, 452 U.S. 576, 593 (1981).
[27] See *Goldberg v. US*, 425 U.S. 94, 112 (1976).
[28] See *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 719 (1967).
[29] See *INS v. Stevic*, 467 U.S. 407, lead opinion at fn.18 (1984).
[30] See *City of Rome v. US*, 446 U.S. 156, 167 (1980).
[31] See *Miller v. Youakim*, 440 U.S. 125, 131 (1979).

III. STATUTORY CHALLENGE.

The Plaintiff's approach to 26 USC and Americans such as the Alleged Defendant:

3.1 The IRS calls Americans this, "Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. . ." This citizen is clearly not the citizen alluded to or described below.

> An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this chapter be considered to be a nonresident alien individual.
>
> An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered . . . as a citizen of the United States.

3.2 In light of the Supreme Court's prescription of how to interpret statutory definitions, any American encountering such definitions would rightfully deem the statutory scheme to which such definitions apply to be intended for individuals of a citizenship different from their own. Any American would rightfully comply with such statutory schemes by ignoring them altogether.

3.3 In the Tax Code, Congress has indeed named a subject of the tax or procedure in other commonly applied portions of the Tax Code's statutory scheme, such as in its chapter two relating to Social Security income tax for self employed individuals:

> § 1402(b) . . . ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual.***
>
> 26 CFR 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have...do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of***

the Commonwealth of Puerto Rico, the Virgin Islands, or . . . of Guam or American Samoa is not considered to be a nonresident alien individual.

And in Tax Code chapter 23 (Federal Unemployment Tax Act, FUTA):

26 USC § 3306(j) State, United States, and American employer. ***For purposes of this chapter-***

(1) State.-The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) United States.-The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) American employer.-The term "American employer" means a person who is-

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

And in Tax Code chapter 21 FICA employee Social Security, Congress named a subject:

§ 3121(e) An individual who is ***a citizen of the Commonwealth of Puerto Rico*** (but not otherwise a citizen of the United States) ***shall be considered . . . as a citizen*** of the United States.

26 CFR 31.0-2(a)(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meaning so assigned to them.

26 CFR 31.3121(e)-1(b) ...The term "citizen of the United States" ***includes*** a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa. [32]

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[32] Note: If the term "includes" is one which operates to expands application to all similar things not mentioned, the fact that the statute does not use the term makes this reference in regulation a plain and impermissible derogation of § 3121(e).

And in Social Security administration legislation Congress named a beneficiary:

> Social Security Act § 1818. [42 U.S.C. 1395i–2] Health Insurance Benefits for Elderly Individuals Not Otherwise Eligible.-
>
> (a) Every individual who -
>
> (1) has attained the age of 65,
>
> (2) is enrolled under part B of this title,
>
> (3) is a resident of the United States, and is either (A) ***a citizen*** or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and
>
> (4) is not otherwise entitled to benefits under this part,
>
> shall be eligible to enroll in the insurance program established by this part. Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1818A.
>
> ((b) and (c) omitted)
>
> (d)(6)(A) ***In the case where a State***, a ***political subdivision of a State***, or an ***agency or instrumentality of a State or political subdivision thereof determines to pay, for the life of each individual, the monthly premiums due*** under paragraph (1) on behalf of each of the individuals in a qualified ***State or local government*** retiree group who meets the conditions of subsection (a), the amount of any increase otherwise applicable under section 1839(b) (as applied and modified by subsection (c)(6) of this section) with respect to the monthly premium for benefits under this part for an individual who is a member of such group ***shall be reduced by the total amount of taxes paid under section 3101(b)*** of the Internal Revenue Code of 1986 by such individual ***and under 3111(b)*** of such Code by the employers of such individual on behalf of such individual with respect to employment (***as defined in section 3121(b)*** of such Code).

> Social Security Act § 211 [42 USC § 411]. For the purposes of this title [Title II of Social Security Act] -
>
> (b)(2) . . . The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not***, for the purpose of this subsection, ***be considered to be a nonresident alien individual***. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

3.4 As used in this statute, above, the term "this title" refers to Title II of the Social Security Act which is called "Federal Old-Age, Survivors, and Disability Insurance Benefits." We see the term "State" used directly and solely to taxes relating only to individuals of a

citizenship different from the U.S. citizenship the U.S. says the Alleged Defendant has as an American. Indeed, § 1818 (above) freely bases premiums for the elderly who are not otherwise eligible upon taxes imposed in Tax Code chapter 21 (FICA) with respect to employment as defined in FICA, a chapter equivalent to 1939 Tax Code § 3811 Collection of taxes in Puerto Rico and the Virgin Islands according to Tax Code § 7651(5)(A).

> 26 USC § 7651(5) Virgin Islands.-
> (A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "***any tax specified in section 3811*** of the Internal Revenue Code" shall be ***deemed to refer to any tax imposed by chapter 2 or by chapter 21***.
>
> 1939 Code § 3811 Collection of Taxes in Puerto Rico and Virgin Islands.
> (a) Puerto Rico.
> (b) Virgin Islands. [33]
>
> 26 USC § 7655 Cross References.- (a) Imposition of Tax in Possessions.-
> For provisions imposing tax in possessions, see-
> (1) Chapter 2, relating to self-employment tax;
> (2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act.

3.5 Section 201 of the Social Security Act creates, the "Federal Old-Age and Survivors Insurance Trust Fund". Section 202 of the Act provides for retirement compensation, and § 223 of the Act provides for Social Security disability payments. Americans are excluded by law from the operation of the Social Security Act, and from that of 26 USC Social Security chapters two and twenty one, as well as from FUTA in ch.23.

> "***Homes that do not meet <u>the definition</u> may not be licensed***, and, under state law, only licensed facilities are entitled to Foster Care payments." [34]

3.6 And these are the only other chapters of the Tax Code, other than chapter one, which the Plaintiff employs against or upon the individual, employee or self employed, as it relates to the imposition of taxes under 26 USC and compensation for personal services

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[33] Clearly, 1939 Tax Code § 3811 was merely split into chapters 2 and 21 of the 1954 Tax Code.
[34] See *Miller v. Youakim*, 440 U.S. 125, 131 (1979).

performed by the Alleged Defendant. None of these subjects, expressly named by Congress, happen to be the Alleged Defendant.

3.7 From the authorities cited above it is readily gleaned that strict interpretation must govern any assessment of Alleged Defendant's pains and penalties, status, duties, and liabilities, as it relates to 26 USC.

> U.S. Constitution, Amdt. 16, February 25, 1913. "The ***Congress shall have power to lay and collect taxes on incomes***, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

> 26 CFR 1.1-1 ***Income tax on individuals***. (a) General rule.
> (1) ***Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States*** . . .
> (b) Citizens or residents of the United States liable to tax. ***In 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 . . .
> (c) Who is a citizen. ***Every person born or naturalized in the United States and subject to its jurisdiction*** is a citizen . . .

3.8 Again, while Congress has clearly identified a subject in chapters of the Tax Code which impose taxes which clearly do not pertain to Americans but rather apply to people who are not U.S. citizens or Americans. Congress has never, in statute or otherwise, named Americans as subject to any tax imposed under the provisions of 26 USC.

> "***But the section contains nothing to that effect***, and, therefore, ***to uphold*** [IRS Commr's] addition to the tax ***would be to hold that it may be imposed by regulation, which, of course, the law does not permit***. *U.S. v. Calamaro*, 354 US 351, 359; *Koshland v. Helvering*, 298 US 441, 446-67; *Manhattan Equipment Co. v. Commissioner*, 297 US 129, 134." [35]

3.9 The U.S. relies upon 26 CFR 1.1-1 as a source of authority in the IRS' frivolous arguments list (See **Ex.B hereto**, 2007 at p.16), and in indictments.

> "***All citizens of the United States were taxed*** on their world wide income. U.S. Const. amend XVI; ***Title 26, United States Code, §§ 1, 61; Treas. Reg. § 1.1-1(b)***. Thus, the

[35] See *C.I.R. v. Acker*, 361 U.S. 87, 92 (1959).

> tax laws of the United States, including the Internal Revenue Code (Title 26 of the United States Code), required ***every citizen and resident of the United States*** who received gross income from anywhere in the world in excess of the minimum filing amount established by law for a particular tax year to annually make and file an income tax return for that tax year. Title 26, United States Code, § 6011(a); Treas. Reg. § 1.6011(a). Examples of the types of gross income that were required to be reported on an income tax return included: (a) compensation for services, including fees, commissions,, fringe benefits and similar items; (b) gross income derive from business[.]"

See **Ex.A hereto**, U.S. Dist. Court, ND Florida, at Pensacola, *U.S. v. Hirmer*, #3:08cr79-011-MCR, indictment filed Aug. 21, 2008, at its ¶11. Before proceeding note also that the Dept. of Justice cites 26 USC §§ 1 and 61 but does not cite 26 USC § 83 which "explains how property received in exchange for services is taxed." 956 F.2d 496, 498 at [1] (CA5 1992).

3.10 We see that the Alleged Defendant, an American, is not subject to the Social Security Act, FUTA, or to chapter one of 26 USC were it not for Treasury Regulation 26 CFR 1.1-1. When the maxim that executive regulations cannot create authority is honored, Tax Code chapter one (§§ 1-1399) is wholly inapplicable to the Alleged Defendant for its lack of a statutory definition of "citizen" which describes or otherwise implicates Americans.

3.11 For the purposes of reviewing specific provisions throughout the remaining titles of the Social Security Act, and since title II of the Act establishes the [Social Security] Trust Fund, any American knows that Social Security benefits and taxes are not applicable or available to U.S. citizens, and any provision's reference to the §§ 200's renders such provision applicable only to individuals with a citizenship which is wholly different from U.S. citizenship the Plaintiff claims is that of Americans.

3.12 In reply to these this challenge, in *Warner*, the Plaintiff propounded only a collection of "tax protestor" cases lost by others who had no clue and who did not in any way argue these challenges or authorities.

> "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").

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 filed December 12, 2008. Thomas Bradley, Nelson P. Cohen, and Randall Crandon are U.S. Attorneys for prosecution.

3.13 NOTE: When challenged in criminal tax trials with this issue, the U.S. Attorneys point to Tax Code (26 USC) § 7701 to prove that the fifty freely associated states are within the scope of the Tax Code, stating:

> "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)."
>
> 26 USC § 7701 Definitions.
>
> (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-
>
> (9) United States.-The term "United States" when used in a geographical sense includes only the States and the District of Columbia.
>
> (10) State.-The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

3.14 Note that Hawaii and Alaska were excluded by Congress from this definition of "state" due to the fact that they became members of the group of freely associated compact states. (See P.L. 86-624, §18(j); P.L. 86-70, § 22(a)).

3.15 Think of it. In a tax criminal case, <u>in Alaska</u>, the Dept. of Justice points to a statute which excludes Alaska from "State" <u>specifically because it became a state of the Union</u>, and

this is supposed to convince an American that their state is a "State" for the purposes of the Tax Code.

> 4 USC § 72. Public Offices; at seat of Government. 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. (July 30, 1947, ch. 389, 61 Stat. 643.)

3.16 This is a statute the Plaintiff has already failed to answer to in *Warner*, and in *U.S. v. Arant*. Indeed, the "decision" in *Arant* is entirely different in every way from the Plaintiff's reply in *Warner*, to wit:

> "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 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, W. Dist. WA, Seattle #CV-07-0509-L, ruling of Chief Judge R. Lasnik, Feb. 5, 2008.

3.17 In a moment of blinding confusion, R. Lasnik equates the assessment of taxes with the *imposition* of taxes which is the focus of this challenge. To follow this requires that no tax is imposed until there's been an assessment by the IRS, which is truly foolish. "Tax protestors who persist" yet federal courts has never addressed the language of these provisions; this is a

call for persistence. Are Americans supposed to accept the rulings of the courts when it costs them obvious statutory protections of property, privacy, and liberty? Hardly. A Defendant "may not agree with that authority, but nevertheless, it exists," but nobody in Plaintiff's ranks can prove it. The *Arant* ruling cites:

Law Offices of Jonathan A. Stein v. Cadle Co., 250 F.3d 716, 720 (CA9 2001):

> "As the facts show, this is a winner-takes-all case. If the United States has priority, its judgment will absorb the whole fund. If Welty has priority, his judgment will do so. Welty relies upon his March 23, 1996, filing with the California Secretary of State to obtain priority; the United States relies upon §§ 3713. The government does note that it obtained its judgment on January 31, 1996, and filed its notice in the Superior Court action on June 5, 1996. But Welty does not seek to rest his case on the assertion that he would have priority if §§ 3713 applies; he simply argues that it does not apply because §§ 6323 applies instead. It is to that narrow issue that we will direct our attention."

And *McLaughlin v. C.I.R.*, 832 F.2d 986 (CA7 1987):

> "[1-3] On appeal, McLaughlin posits three arguments: (1) that his liability for federal income tax is contractual in nature and he has rescinded that contract; (2) that his religious scruples prevent him from "entering into contracts with the inhabitants of the land"; and (3) that he receives no benefits from the state and therefore owes nothing to the state. Each of these arguments have been previously addressed by the courts and soundly rejected; by raising them again in the Tax Court and on appeal to this court McLaughlin has understandably provoked judicial ire.
>
> The notion that federal income tax is contractual in nature is not only utterly without foundation but, despite McLaughlin's protestations to the contrary, has been repeatedly rejected by the courts. (See, *e.g.*, *Newman v. Schiff*, 778 F.2d 460, 467 (CA* 1985); *United States v. Drefke*, 707 F.2d 978, 971 (8th Cir.), cert. denied, sub nom., *Jamieson v. United States*, 464 US 942, 104 S.Ct. 359, 78 L.Ed.2d 321 (1983)). Furthermore, case law in this circuit is well settled that individuals must pay federal income tax on their wages regardless of whether they avail themselves of governmental benefits or privileges. (See *Coleman v. C.I.R.*, 791 F.2d 68, 70 (CA7 1986); *Lovell v. United States*, 755 F.2d 517, 519 (CA7 1984)). And finally, McLaughlin's contention that his religion excuses him from having to pay income tax is forestalled by the Supreme Court's decision *United States v. Lee*, 455 US 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982), where the court held that "because the broad public interest in maintaining a sound tax system is of such high order, religious in conflict with the payment of taxes affords no basis for resisting the tax. *Id.* at 260, 102 S.Ct. at 1057. See also *First v. C.I.R.*, 547 F.2d 45 (CA7 1976) (per curiam)."

And *United States v. Fior D'Italia*, 536 US 238, 122 S.Ct. 2117, 153 L.Ed.2d 280 (2002), syllabus:

> "Restaurant challenged use by the Internal Revenue Services (IRS) of aggregate method to determine, assess, and collect its share of Federal Insurance Contributions Act (FICA) taxes on tips received by its employees. The United States district Court for the Northern District of California, 21 F.Supp.2d 1097 [sic?], granted summary judgment for restaurant, and IRS appealed. The Court of Appeals for the Ninth Circuit, 242 F.3d 844, affirmed, and certiorari was granted. The Supreme Court, Justice Beyer, held that: **(1)** the law authorized the IRS to base its assessment upon its aggregate estimate of all of the tips that the restaurant's customers paid its employees; **(2)** such a method is not precluded by negative implication from statutes which authorize the IRS to use methods of estimation for determining income tax liability and which authorize the Secretary of the Treasury to adopt regulations that prescribe mechanisms for employers to adjust FICA tax liability; **(3)** fact that an aggregate estimate will sometimes include tips that should not count in calculating the FICA tax the employer owes did not render use of that method unreasonable; **(4)** regulation which says that an employer, when calculating its FICA tax, must "include wages received by an employee in the form of tips only to the extent of the reports reported to the employer" does not render the aggregate method unlawful; **(5)** use of aggregate method was not unlawful as lending itself to abusive agency action; and **(6)** statutes and congressional documents that protect restaurants from onerous monitoring requirements do not support argument that aggregate estimates are statutorily prohibited. REVERSED."

3.18 Where, in all of this, is the review of 4 USC § 72, 26 USC §§ 1402(b), 3121(e), and 3306(j), and 26 CFR 1.1-1 to which these Americans are entitled? <u>These</u> are the Defendant's intrinsic evidence. This Court sees two entirely different replies to precisely the same statutory challenge it sees in this motion, one from the executive and one from the judiciary. Which one will this Court disagree with by choosing the other? Why is one wrong and another correct? Does this Court have an entirely different one which would show that indeed three answers exist but none which mention the provisions relied upon herein?

3.19 If the Defendant cannot even get review in memorandum of the operation of the handful of provisions relied upon, due process requires dismissal, the least grounds for such being void for vagueness.

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IV. VOID FOR VAGUENESS & DUE PROCESS.

4.1 The law the Alleged Defendant relies upon will percolate until the U.S. Supreme Court weighs in, and U.S. Tax Court will penalize the Alleged Defendant for any such reliance. If the Alleged Defendant claims to be a non-resident alien it means prison. (See *U.S. v. Snipes*, U.S. Dist. Court Middle FL, Ocala Div. #5:06-cr-22(S1)-Oc-10GRJ, three years, reported to prison Dec. 10, 2010). Any claim of being a "citizen of the United states" which the Alleged Defendant makes is the claim to be a nonresident alien. (See *Warner*, *supra*).

4.2 Since the Plaintiff is calling the Alleged Defendant a nonresident alien when calling the Alleged Defendant a "citizen of the United States," Alleged Defendant has to believe that an "American," such as the Alleged Defendant, is totally different, politically, and distinguished from any "citizen of the United States." If the Alleged Defendant agrees with the Plaintiff and claims to be a "citizen of the United States," as did Mr. Warner, the Plaintiff will send her to prison *ala* Snipes for claiming to be a nonresident alien, whatever that even is.

4.3 Alleged Defendant is not claiming to be a nonresident alien, and Alleged Defendant is not claiming to be a "citizen of the United States," because they are the same thing and both result in prison, while the Plaintiff points to that status in 26 CFR 1.1-1 to substantiate its claims of authority to tax the Alleged Defendant as an "American." If, in reply to this motion, the Plaintiff calls the Alleged Defendant a "citizen of the United States," the Plaintiff is calling the Alleged Defendant a nonresident alien, as in *Warner*. If, in reply to this motion, Plaintiff calls the Alleged Defendant a nonresident alien, why the objection to Mr. Snipes calling himself such an alien, and which chapter imposes the tax on such an alien?

4.4 Plaintiff calls the Alleged Defendant a "citizen of the United states," which means Tax Code chapters 2, 21, and 23 are wholly inapplicable due to the express exclusions of such political status from those chapters by 26 USC §§ 1402(b), 3121(e), and 3306(j), respectively, imposed by Congress. Nothing in chapter 1's statutes alludes even remotely to either of these *citizens* as the subject of that chapter. This entire controversy arises from the promulgation of 26 CFR 1.1-1 as the basis for applying chapter 1 to Americans, for nothing in 26 USC applies it to Americans without it; it's just a regulation. This violates the 16th Amdt. to the U.S. Constitution which authorizes only Congress to lay and collect an income tax.

4.5 Of the previous paragraphs only the last, directly above, makes sense of the authorities relied upon, and it explains why the Plaintiff runs every direction but to the point when facing this claim.

"We have a Tax Code that's far too complex for most Americans to understand[.]"

U.S. President, B. Obama, April 15, 2009.

4.6 "Most Americans"? That would include everybody at the IRS and at the U.S. Dept. of Justice. (See **Ex.C hereto**, *McKee v. Comm'r*, IRS claims ignorance as a defense). If a statute is unreasonably vague, if its language is not plain enough to convey its intent or application, it may be held to be *void for vagueness*. Below are several expressions of this standard of due process, all of which are from the U.S. Supreme Court.

> "We agree with the holdings of the District Court and the Court of Appeals on the due process doctrine of vagueness. The settled principles of that doctrine require no extensive restatement here. (fn.7) ***The doctrine incorporates notions of fair notice or warning***. (fn.8) ***Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent "arbitrary and discriminatory enforcement***." (fn.9) Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts. (fn.10) The statutory language at issue here, "publicly... treats contemptuously the flag of the United States...," has such scope, *e.g.*, *Street v. New York*, 394 U.S. 576 (1969) (verbal flag contempt), and at the relevant time was without the benefit of judicial clarification. (fn.11)" [36]

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[36] See *Smith v. Gougen*, 415 U.S. 566, 572 (1974). The Court's footnotes for this paragraph are as follows:

6. Appellant correctly conceded at oral argument that Goguen's case is the first recorded Massachusetts court reading of this language. Tr. of Oral Arg. 17-18. Indeed, with the exception of one case at the turn of the century involving one of the statute's commercial misuse provisions, *Commonwealth v. R. I. Sherman Mfg. Co.*, 189 Mass. 76, 75 N.E. 71 (1905), the entire statute has been essentially devoid of state court interpretation.

7. The elements of the "void for vagueness" doctrine have been developed in a large body of precedent from this Court. The cases are categorized in, e.g., *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). See Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U.Pa.L.Rev. 67 (1960).

8. E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("***No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or***

"Appellant's second argument, that 26-2101(c) is void for vagueness, also raises a substantial federal question-one of first impression in this Court-even though appellant fundamentally misapprehends the reach of the First Amendment in his argument that the protections of that Amendment extend to the sexual devices involved in this case. As we said in *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972):

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, ***we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning***. Second, if arbitrary and discriminatory enforcement is to be prevented, ***laws must provide explicit standards*** for those who apply them. ***A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application***." (Footnotes omitted.)

"See also *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S. Ct. 681 (1927); *Connally v. General Construction Co.*, 269 U.S. 385 (1926)." [37]

"This ordinance is void for vagueness, both in the sense that it "***fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute***," *United States v. Harriss*, 347 U.S. 612, 617, ***and because it encourages arbitrary and erratic arrests and convictions***. *Thornhill v. Alabama*, 310 U.S. 88; *Herndon v. Lowry*, 301 U.S. 242."

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forbids") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("***[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law***") (citations omitted).

9. E.g., *Grayned, supra* at 108; *United States v. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) ("[T]o attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury"); *United States v. Reese*, 92 U.S. 214, 221 (1876) ("***It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large***").

10. E.g., *Grayned, supra*, at 109; *Smith v. California*, 361 U.S. 147, 151 (1959). Compare the less stringent requirements of the modern vagueness cases dealing with purely economic regulation. E.g., *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963) (Robinson-Patman Act).

11. See fn. 6, *supra*.

[37] See *Sewell v. Georgia*, 435 U.S. 982, 985 (1978).

> "***Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids.***" *Lanzetta v. New Jersey*, 306 U.S. 451, 453."
>
> "*Lanzetta* is one of a well-recognized group of cases ***insisting that the law give fair notice of the offending conduct***. See *Connally v. General Construction Co.*, 269 U.S. 385, 391; *Cline v. Frink Dairy Co.*, 274 U.S. 445; *United States v. Cohen Grocery Co.*, 255 U.S. 81. In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337; *United States v. National Dairy Products Corp.*, 372 U.S. 29; *United States v. Petrillo*, 332 U.S. 1." [38]

4.7 This standard extends to tax statutes. A tax must be imposed by clear and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar Refining v. McClain*, 192 U.S. 397, 416 (1904); *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Smietanka v. First Trust & Savings Bank*, 257 U.S. 602, 606 (1922); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929); *Crooks v. Harrelson*, 282 U.S. 55 (1930); *Burnet v. Niagra Falls Brewing Co.*, 282 U.S. 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932); *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Hassett v. Welch*, 303 U.S. 303, 314 (1938); *U.S. v. Batchelder*, 442 U.S. 114, 123 (1978); *Security Bank of Minnesota v. C.I.R.*, 994 F.2d 432, 436 (CA8 1993)).

4.8 This standard adheres only to fairness, it ensures that the average taxpayer isn't unreasonably burdened or unduly assessed, and is even embodied prominently in the Constitutions of some states.

> Washington Constitution, Article VII, § 5. No tax shall be levied except in pursuance of law; and ***every law imposing a tax shall state distinctly the object of the same*** to which only it shall be applied.
>
> South Carolina State Constitution, Art. X, § 3. Taxes shall be levied in pursuance of law. No tax shall be levied except in pursuance of ***a law which shall distinctly state the object of the same, to which object the tax shall be applied.***

[38] Excerpts from *Papachristou v. City of Jacksonville*, 405 U.S. 156, 172 (1972).

4.9 This can be said to preserve part of a greater whole, a doctrine serving due process and the individual's right to understand and access the law.

> "***It is a fundamental tenet of due process that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes***." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). A criminal statute is therefore invalid ***if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden***." *United States v. Harriss*, 347 U.S. 612, 617 (1954). See *Connally v. General Construction Co.*, 269 U.S. 385, 391-393 (1926); *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972); *Dunn v. United States*, ante, at 112-113. So too, vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute. See *United States v. Evans*, 333 U.S. 483 (1948); *United States v. Brown*, 333 U.S. 18 (1948); cf. *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966)." [39]

> "***Criminal statutes must have an ascertainable standard of guilt or they fall for vagueness***. See *United States v. Cohen Grocery Co.*, 255 U.S. 81; *Winters v. New York*, 333 U.S. 507." [40]

> "***Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed***. *United States v. Harriss*, 347 U.S. 612, 617 (1954). In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged. *Robinson v. United States*, 324 U.S. 282 (1945)." [41]

4.10 The presumption of correctness enjoyed by the Plaintiff disappears upon introduction of evidence to the contrary, a "determination" must be the result of a consideration of all relevant facts and statutes. [42] Statute must clearly implicate the Alleged Defendant as an

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[39] See *United States v. Batchelder*, 442 U.S. 114, 123 (1979).
[40] See *Williams v. United States*, 341 U.S. 97, 100 (1951).
[41] See *United States v. National Dairy Corp.*, 372 U.S. 29, 32 (1963). See also *Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.*, 492 U.S. 257, 297, 300-301 (1989); *U.S. v. Classic*, 313 U.S. 299, 331 (1941).
[42] See *Hughes v. U.S.*, 953 F.2d 531 (CA9 1992); *Portillo v. Comm'r of IRS*, 932 F.2d 1128 (CA5 1991); *Elise v. Connett*, 908 F.2d 521 (CA9 1990); *Jensen v. Comm'r of IRS*, 835 F.2d 196 (CA9 1987); *Scar v. Comm'r of IRS*, 814 F.2d 1363 (CA9 1987); *Benzvi v. Comm'r of IRS*, 787 F.2d 1541 (CA11 1986); *Maxfield v. U.S. Postal Service*, 752 F.2d 433 (1984); *Weimerskirch v. Comm'r of IRS*, 596 F.2d 358, 360 (CA9 1979); *Carson v. U.S.*, 560 F.2d 693 (1977); *U.S. v. Janis*, 428 U.S. 433, 442 (1975); *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 758-770 (1973); *Pizzarello v. U.S.*, 408 F.2d 579 (1969); *Terminal Wine*, 1 B.T.A. 697, 701-02 (1925); *Couzens*, 11 B.T.A. 1140, 1159, 1179.

offender or taxable subject, or Alleged Defendant must be deemed to be without the scope of 26 USC. Is the Alleged

Defendant claiming to be a restaurateur, a legal defense fund, or a nonresident alien? Does the U.S. Constitution actually allow for such a quandary as the basis for imprisonment?

4.11 Plaintiff offers and relies upon a mere regulation, it has different answers to the same question, it cannot be dragged into a discussion of the provisions relied upon despite their relevance, and it will sooner misrepresent the nature of this challenge to take away the liberty of an innocent American than acknowledge that the law they swore to uphold affords the protections detailed herein. If not for the truths of the statutory challenge made herein, the charges in this case are prime for dismissal in a *void for vagueness* ruling; this is due process.

Dated: December 30, 2010

Respectfully,

Janice Sue Taylor, sui juris
Of one's own right, possessing full social
Civil rights, sovereign character and capacity
Pursuant to U.S.C. 28 §1746 (1)
Without the United States,

offender or taxable subject, or Alleged Defendant must be deemed to be without the scope of 26 USC. Is the Alleged

Defendant claiming to be a restaurateur, a legal defense fund, or a nonresident alien? Does the U.S. Constitution actually allow for such a quandary as the basis for imprisonment?

4.11 Plaintiff offers and relies upon a mere regulation, it has different answers to the same question, it cannot be dragged into a discussion of the provisions relied upon despite their relevance, and it will sooner misrepresent the nature of this challenge to take away the liberty of an innocent American than acknowledge that the law they swore to uphold affords the protections detailed herein. If not for the truths of the statutory challenge made herein, the charges in this case are prime for dismissal in a *void for vagueness* ruling; this is due process.

WITHOUT PREJUDICE

Pursuant to UCC 1-308: "I reserve my right not to be compelled to perform under any contract, commercial agreement or bankruptcy that I did not enter knowingly, voluntarily, and intentionally. And furthermore, I do not and will not accept the liability of the compelled benefit of any unrevealed contract or commercial agreement or bankruptcy". I have made a timely and explicit reservation of my rights and insist that any statutes used in my defense shall be construed to be in harmony with the Common Law.

Dated: December 31, 2010

Respectfully,

Janice Sue Taylor, sui juris
Of one's own right, possessing full social
Civil rights, sovereign character and capacity
Pursuant to U.S.C. 28 §1746 (1)
Without the United States,

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. 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 31th day of December, 2010 A.D

Janice Sue Taylor, sui juris
Of one's own right, possessing full social
Civil rights, sovereign character and capacity
Pursuant to U.S.C. 28 §1746 (1)
Without the United States,

Exhibit F:

Ex.F: Plaintiff's indictment in *U.S. v. Hirmer*, #3:08cr79-011/MCR, Pensacola, FL dated 8/21/08, claiming at its ¶11 that 26 CFR 1.1-1 is the provision which subjects Americans to 26 USC.

Exhibit: F

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

UNITED STATES OF AMERICA

SEALED

v.

INDICTMENT

3:08cr79/MCR

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,
DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER,
ARTHUR RAMIREZ MERINO
and
JEFFRY JEAN JENKS

THE GRAND JURY CHARGES:

COUNT ONE

A. INTRODUCTION

At all times relevant to this Indictment:

1. Pinnacle Quest International, also known as "PQI" or "Quest," was a Panamanian business entity headquartered in Fort Walton Beach, Florida, and controlled

Returned in open court pursuant to Rule 6(f)
8-21-08
Date
United States Magistrate Judge

CERTIFIED A TRUE COPY
Ann M. McCool, Clerk
By: Deputy Clerk

by **CLAUDIA CONSTANCE HIRMER and MARK STEVEN HIRMER (hereinafter "CLAUDIA HIRMER" and "MARK HIRMER," or "the HIRMERS").**

2. PQI was the successor entity to the Institute for Global Prosperity, also known as "IGP" or "Global," which ceased operations in approximately May 2002 after several states issued "Cease and Desist" orders against Global and U.S. law enforcement began a criminal investigation into Global and its founders, including David Struckman. **CLAUDIA HIRMER** served as Global's marketing director and was the Global representative responsible for creating Global's website and administering its sales database. Struckman and others were indicted in May 2004 for Conspiracy to Defraud the United States. Tax evasion charges were added to the Indictment in July 2005. In February 2004, Struckman moved to Panama where he resided until arrested and forcibly removed to the United States to answer to the Indictment in January 2006. On November 8, 2007, a Seattle, Washington, jury convicted Struckman as charged.

3. Similar to the Global scheme, PQI sold "memberships" at three levels of participation: Q1 ($1,350.00), Q2 ($7,500.00) and Q3 ($18,750.00). PQI members gained access to various presentations, conference calls, DVDs, CDs, and, for Q2 and Q3 participants, offshore conferences organized by **CLAUDIA HIRMER.**

4. Synergy Productions International, Inc. ("SPI") was an administrative arm of PQI, responsible for the collection of money from the sale of memberships, CDs and tickets to the offshore conferences. SPI also purchased the CDs, PQI promotional items,

office equipment and computers and paid the various expenses associated with the conferences. SPI was controlled by **MARK HIRMER and CLAUDIA HIRMER.**

5. MCD Productions was an entity with a bank account that accepted credit card transactions on behalf of SPI. MCD Productions was controlled by **MARK HIRMER and CLAUDIA HIRMER.**

6. PQI contracted with various vendors who sought access to PQI members to promote their theories and sell their products. Most vendors sold their products exclusively through PQI. PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified and that no law required United States citizens to pay income taxes. PQI also presented vendors who promoted offshore corporate structures, debt elimination tactics and offshore investment opportunities.

7. PQI members were encouraged to refer clients to authorized vendors. Top-selling PQI members became part of PQI's "Executive Council," or "EC." The Executive Council assisted in administering and operating PQI, which included determining what other individuals or entities PQI would allow access to PQI members at PQI-hosted conferences. **ELLEN MEREDITH STUBENHAUS, a/k/a "Dr. Ellen"** (hereinafter **"ELLEN STUBENHAUS"**), **JOSEPH WILLIAM McPHILLIPS** (hereinafter **"JOSEPH McPHILLIPS"**), **ARNOLD RAY MANANSALA** (hereinafter **"ARNOLD MANANSALA"**), **DOVER EUGENE PERRY** (hereinafter **"DOVER PERRY"**), **MICHAEL GUY LEONARD** (hereinafter **MICHAEL LEONARD**), **and**

ARTHUR RAMIREZ MERINO (hereinafter **ARTHUR MERINO**) all served as members of the Executive Council.

8. A PQI "Qualified Consultant," or "QC" was an individual who is authorized by PQI to sell one, two, or all three of PQI's membership levels, depending upon the QC's previous sales record. **MARK DANIEL LEITNER** (hereinafter "**MARK LEITNER**") served as a Qualified Consultant for PQI and as a representative/consultant for at least one debt elimination vendor.

9. Southern Oregon Resource Center Educational Services, or "SORCE," was a PQI vendor located in Ashland, Oregon. SORCE was controlled by **EUGENE JOSEPH CASTERNOVIA, a/k/a "Gino"** (hereinafter "**EUGENE CASTERNOVIA**"). **MARK BARRY LYON** (hereinafter "**MARK LYON**") and **ROBERT LEIGHTON PENDELL** (hereinafter **ROBERT PENDELL**) worked for SORCE. **CASTERNOVIA, LYON** and **PENDELL** utilized seminars, presentations and materials to sell their services, which primarily consisted of the creation of a complex system of offshore entities used to hide and conceal assets.

10. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury. The IRS had responsibility for the ascertainment, assessment, and collection of taxes, including income taxes.

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).* Thus, the tax laws of the United States, including the Internal Revenue Code (Title 26 of

the United States Code), required every citizen and resident of the United States who received gross income from anywhere in the world in excess of the minimum filing amount established by law for a particular tax year to annually make and file an income tax return for that tax year. *Title 26, United States Code, § 6011(a); Treas. Reg. §1.6011(a).* Examples of the types of gross income that were required to be reported on an income tax return included: (a) compensation for services, including fees, commissions, fringe benefits and similar items; (b) gross income derived from business; (c) gains derived from dealings in property; (d) interest; (e) rents; (f) royalties; (g) dividends; (h) alimony; (i) annuities; (j) income from life insurance and endowment contracts; (k) pensions; (l) income from discharge of indebtedness; (m) distributive share of partnership gross income; (n) income in respect of a decedent; and (o) income from an interest in an estate or trust.

12. Those who promoted offshore structures for U.S. taxpayers were attempting to illegally exploit the general rule that non-resident aliens are not required to pay income tax on U.S. interest income, U.S. capital gains, or income from the sale of foreign properties or from foreign sources. *Title 26, United States Code, §§ 871-879.* Thus, they attempted to create structures - in form - which created the appearance that a non-resident alien is the owner of the assets and income when in fact the owner was the U.S. taxpayer. Hence, the promoter was attempting to convert a U.S. taxpayer who was required to report worldwide income into a non-resident alien or entity that reports no income and thus no tax.

13. In addition, some U.S. citizens attempted to structure their income-earning activities through foreign entities in an illegal attempt to take advantage of the differences in the way the United States taxes its citizens as compared to foreign persons. Foreign persons (non-resident aliens and foreign corporations) were only taxed in the United States on income originating in the United States. *Title 26, United States Code, §§ 871-879.*

B. CHARGE

That from in or about May 2002, through on or about the date of the return of this Indictment, in the Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,
DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER
and
ARTHUR RAMIREZ MERINO,

did knowingly and willfully combine, conspire, confederate and agree together and with other persons to: (1) defraud the Internal Revenue Service, an agency of the United States, by dishonest and deceitful means, by attempting to impede, impair, obstruct and defeat the lawful government functions of the Internal Revenue Service in the

ascertainment, computation, assessment and collection of income tax; and (2) to commit offenses against the United States, specifically wire fraud, in violation of Title 18, United States Code, Section 1343.

C. MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

1. After the demise of Global, **CLAUDIA HIRMER, MARK HIRMER** and others created PQI in order to continue to promote anti-government views and various schemes to hide and conceal assets from the United States Government and the IRS, including illegal tax evasion, offshore corporate structures and offshore investment schemes.

2. To that end, **CLAUDIA HIRMER, MARK HIRMER, ELLEN BENHAUS, JOSEPH McPHILLIPS, ARNOLD MANANSALA, DOVER PERRY, MICHAEL LEONARD, MARK LEITNER, ARTHUR MERINO** and others sold PQI memberships, and in doing so, made false and fraudulent misrepresentations about the legality and authenticity of the programs and services PQI claimed to provide. Many of their customers were lured to PQI through the promise of "debt elimination."

3. PQI contracted with "vendors," which allowed the vendors access to PQI members so that the vendors could sell their illegal and fraudulent schemes to PQI members, with validation by PQI of the vendors' legitimacy. Such vendors included SORCE, represented by **EUGENE CASTERNOVIA, ROBERT PENDELL and**

MARK LYON, several "debt elimination" companies, represented by **DOVER PERRY, MICHAEL LEONARD, MARK LEITNER, ARTHUR MERINO** and others, along with numerous others promoting various illegal tax evasion schemes.

4. Specifically, through their live, recorded and written materials, PQI, its owners and Executive Council members, and PQI vendors presented information in a manner which misled PQI members to believe that they legally could pay no taxes, become free of debt, accumulate wealth, and protect their assets from the government and creditors through information PQI and it vendors alone could provide.

5. In addition, PQI owners, Executive Council members, Qualified Consultants and vendors often personally engaged in acts designed to impede, impair, obstruct and defeat the lawful government functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of their individual income tax. Such acts included frivolous correspondence, threats of legal retaliation, creation of false and fraudulent financial information, and extensive use of offshore entities and accounts.

6. Membership fees were paid to the Qualified Consultants and Executive Council members who recruited the member, a portion of which was sent to PQI through one of the **HIRMER'S** accounts. Payments were primarily made by cashier's checks, credit cards or wire transfer through an internet payment service. The Qualified Consultant's share of the profit from their first two sales was sent up-line to their own consultant; thereafter, the Qualified Consultant kept all the consultant-seller's portion of the membership fee.

7. The **HIRMERS** conducted the vast majority of their financial transactions through the use of cashier's checks and wire transfers. The **HIRMERS** wire transferred much of the money obtained from PQI sales through a series of entities located in Panama. The **HIRMERS** ultimately used the money for facilitation of the conspiracy and their own personal use.

8. One of the methods promoted by a PQI vendor and used extensively by PQI owners, Executive Council members, other vendors and members was a warehouse banking program called "MYICIS." The program offered anonymous banking services and protection from government intrusion. Communication and money movement were accomplished primarily by password-protected emails and wire transmissions, called Electronic Money Orders, and debit cards. MYICIS claimed they would not honor IRS levies. MYICIS was fraudulent and eventually depositors lost their money.

9. All of the defendants made statements and committed acts to hide and conceal the object of the conspiracy and the acts in furtherance thereof.

D. OVERT ACTS

In furtherance of this conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Northern District of Florida and elsewhere:

1. On or about April 9, 1999, **MARK LEITNER** signed and submitted a "Constructive Legal Notice" to his employer, the IRS, and the Social Security

Administration, which revoked his social security number and established a tax-exempt status. **LEITNER** simultaneously stopped filing income tax returns.

2. On or about April 27, 2000, **MARK HIRMER and CLAUDIA HIRMER** opened a bank account in the name of MCD Productions at AmSouth Bank. The account was primarily used to receive credit card deposits for Global, and then for PQI.

3. On or about March 15, 2001, **MARK LEITNER** sent to the IRS a "Notice of Affidavit Statement in Rebuttal to Internal Revenue Code."

4. On or about November 28, 2001, **MICHAEL LEONARD** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax s[illegible]. The letter informed **LEONARD**, among other things, that "Federal tax laws are passed by Congress and signed by the President. The Internal Revenue Service is responsible for administrating federal tax laws fairly and ensuring that taxpayers comply with the laws.... While tax collection is not a popular function of government, it clearly is a necessary one. Without it all other functions would eventually cease.... There are people who encourage others to deliberately violate our nation's tax laws. It would be unfortunate if you were to rely on their opinions. These persons take legal statements out of context and claim that they are not subject to tax laws.... Federal courts have consistently ruled against the arguments you have made. Therefore, we will not respond to future correspondence concerning these issues."

5. On or about February 15, 2002, **MARK LYON** sent to the IRS a "Declaration of Tax Exempt Foreign Status."

6. On or about May 12, 2002, **CLAUDIA HIRMER** caused PQI to notify "retailers" of Global that PQI "has incorporated a grace period, referred to as a Grandfathering-Clause to allow retailers" from Global to enroll in PQI and keep their status as "qualified for product purchase as well as keeping their existing customer base with their new enterprise as a consultant with PQI, Inc."

7. On or about May 12, 2002, **MARK LEITNER** transitioned from Global to PQI and became a PQI QC.

8. On or about May 12, 2002, **MICHAEL LEONARD** transitioned from Global to PQI and became an EC.

9. On or about May 12, 2002, **ELLEN STUBENHAUS** transitioned from Global to PQI and became an EC.

10. On or about June 7, 2002, **MARK HIRMER and CLAUDIA HIRMER** opened a bank account in the name of Synergy Productions International, Inc. at AmSouth Bank in order to deposit payments received for PQI sales.

11. On or about July 8, 2002, **CLAUDIA HIRMER and MARK HIRMER** paid $65,098.69 from the MCD Productions account at AmSouth Bank, toward the purchase of a waterfront home located at 511 Dory Avenue, Fort Walton Beach, Florida.

12. From on or about December 8 through 12, 2002, **CLAUDIA HIRMER**

and others conducted a Q2 conference in Punta Cana, Dominican Republic, at the Barcelo Bavaro Beach Resort.

13. On or about December 3, 2002, **ELLEN STUBENHAUS** received from the IRS a "3175" letter in response to her challenges to the IRS and the income tax system.

14. On or about January 27, 2003, **ELLEN STUBENHAUS** received correspondence from the IRS regarding the non-filing of her 1997, 1998 and 2001 income tax returns.

15. On or about January 13, 2003, **CLAUDIA HIRMER and MARK HIRMER** received from the IRS a "3175" letter in response to their challenges to the IRS and the income tax system.

16. On or about February 17, 2003, **ELLEN STUBENHAUS** filed a mail fraud report with the U.S. Postal Service in which she claimed fraud by the IRS for mailing correspondence to her regarding her non-filing of income tax returns.

17. On or about April 2, 2003, **MICHAEL LEONARD** filed a mail fraud report with the U.S. Postal Service in which he claimed fraud by the New York State Department of Taxation and Finance for mailing correspondence to him regarding his non-filing of state income tax returns.

18. From on or about June 1 through 6, 2003, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, ARTHUR MERINO** and others conducted a Q2 conference in Cancun, Mexico.

19. On or about May 27, 2003, **ARTHUR MERINO** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax system.

20. On or about July 7, 2003, **ARTHUR MERINO**, using his Corporation Sole, Everest Consulting, sent an "updated info" email to **CLAUDIA HIRMER** in which **MERINO** provided PQI EC members and Qualified Consultants with information about selling Financial Solutions, **MERINO'S** "asset protection, debt elimination, and education" business. **MERINO** offered a $300.00 "thank you" bonus for each referral.

21. On or about July 7, 2003, **ELLEN STUBENHAUS** received notices of deficiency for the 1997, 1998 and 2001 income tax years.

22. On or about July 14, 2003, **MARK LEITNER** stated on a voice mail message, "You were looking into how to completely eliminate your income tax burden and that's what we do for you."

23. On or about August 18, 2003, **MARK LEITNER** falsely told a potential customer, "...everything that PQI has, has a track record, has never been challenged, and is legal."

24. On or about October 15, 2003, **MARK HIRMER** sent an email to a potential PQI member promoting PQI's Q1 and Q2 products and speakers who advocate anti-government and anti-tax agendas.

25. From on or about December 7 through 12, 2003, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, EUGENE CASTERNOVIA, ARNOLD**

MANANSALA, MICHAEL LEONARD, MARK LEITNER, JOSEPH McPHILLIPS and others conducted a Q2 conference in Cancun, Mexico.

26. In or about 2003, **EUGENE CASTERNOVIA** and others created a CD for PQI's Q1 members. On the CD, **CASTERNOVIA** explained his offshore corporate structure as like a puppet show, where he is the puppeteer and, as long as he does not reveal himself, he can order things to be done. **CASTERNOVIA** added that it would be "fraud" to report information about the foreign companies to the IRS, and that "this is a very good thing." that "you're forbidden from telling on yourself."

27. On or about March 2, 2004, and April 29, 2004, **MARK LEITNER** explained to a potential customer that they should control all their assets but not "own" anything, because ownership is a "liability." **LEITNER** also advocated using offshore corporations to establish "complete anonymity" for the movement of money.

28. On or about March 8, 2004, **MICHAEL LEONARD**, who had failed to file state income tax returns since 2001 and federal income tax returns since 1999, received correspondence from the New York State Department of Taxation in which **LEONARD** was told that his dispute with the legality of the Department's right to collect tax revenue was considered frivolous and without merit. The letter further referenced the legality of the federal income tax system, as upheld by numerous courts.

29. On or about March 16, 2004, **ARNOLD MANANSALA** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax system.

30. On or before April 14, 2004, **CLAUDIA HIRMER** made a recorded telephone call for the benefit of PQI members, during which **CLAUDIA HIRMER** encouraged members to buy two products sold by PQI vendors, both of which promoted tax evasion by espousing the idea that the IRS did not have the legal authority to tax income.

31. On or about April 29, 2004, and March 21, 2006, **MARK LEITNER** falsely told a potential customer, in reference to the investments offered by PQI, that "all of the investments have paid out;" that "there have been no negative investments at all since PQI started" and that PQI performs "due diligence" and does not allow the promotion of investments that have not produced positive results in the last three years.

32. On or after June 7, 2004, **ARTHUR MERINO** was notified that the IRS made tax assessments against him for 2000 and 2001. **MERINO** was subsequently notified of tax assessments for 2002. **MERINO** had not filed a tax return since 1999.

33. From on or about June 20 through 26, 2004, **CLAUDIA HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARTHUR MERINO, EUGENE CASTERNOVIA, MARK LYON, ROBERT PENDELL** and others conducted a Q2 conference in Cabo, Mexico.

34. On or about June 23, 2004, **EUGENE CASTERNOVIA** told a potential SORCE customer that he could assist her in protecting her assets and develop a "credible international business and investment presence." **CASTERNOVIA** told her that the government could not trace the offshore structures back to her. **CASTERNOVIA** also

offered education and resources to assist her in becoming a "sovereign American," and requested that she refer anyone interested in "offshore" structures to PQI.

35. From on or about September 19 through 25, 2004, **CLAUDIA HIRMER, ELLEN STUBENHAUS, ARNOLD MANANSALA** and others conducted a Q3 conference in Panama City, Panama.

36. On or about September 27, 2004, L.G. paid to **ELLEN STUBENHAUS** $1,350.00 to join PQI at the Q1 level. L.G. joined PQI in part because **STUBENHAUS** falsely represented to her that she does not have an obligation to file income tax returns and that the IRS has never challenged her.

37. On or about December 2, 2004, **EUGENE CASTERNOVIA and JOSEPH McPHILLIPS** discussed via email recording an overview of SORCE as a "teaser to get them [clients] to a live presentation."

38. On or about December 27, 2004, **CLAUDIA HIRMER** received an email from David Struckman in which Struckman instructed **CLAUDIA HIRMER** to wire transfer "$32,000 to Caribbean Properties ([M.M.] since they don't want to see my name) and make cashiers check for 13,000.00 even to University of Puget Sound, and overnight to Anthony Struckman.... so this will be a 45,000.00 advance for March Q2 payment to me (hopefully we will make some money this time in reforestation!) " After Struckman instructed **CLAUDIA HIRMER** to make monthly $10,000 payments to "this high placed attorney" through his "virtual gold account," Struckman stated to **CLAUDIA HIRMER,** "I guess this is still cheaper than income tax and especially jail!!"

39. On or about December 28, 2004, **MARK HIRMER and CLAUDIA HIRMER** "ledger" transferred $32,000.00 to Caribbean Properties and sent a $13,000.00 cashier's check to the University of Puget Sound from their "Panama Title and Escrow" account at Credicorp Bank in Panama, as instructed by David Struckman.

40. From in or about May through December 2004, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $700,000.00 from the SPI AmSouth bank account to their Panama Title and Escrow account at Credicorp Bank in Panama.

41. From on or about February 19 through 24, 2005, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARNOLD MANANSALA, MICHAEL LEONARD, JOSEPH McPHILLIPS, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Cancun, Mexico.

42. From on or about February 22 through 23, 2005, **EUGENE CASTERNOVIA** recorded a "Sovereign Solutions" DVD, in which he falsely stated to potential SORCE customers that the IRS had told him to pay taxes on his own money, and he said no; that the IRS agreed with him and left him alone. **CASTERNOVIA** added that he had been before the IRS "system" six times and each time they "folded up their books and left." **CASTERNOVIA** also claimed that his accountant had told him to obtain an Employment Identification Number from the IRS and he had refused.

43. From on or about February 22 through 23, 2005, **ROBERT PENDELL** recorded a "Sovereign Solutions" DVD, in which he falsely claimed that: (1) "my tax

liability is zero;" (2) "I have 30-40% more of my income;" (3) I am a free individual, no one has a claim on my labor;" and (4) I owe nothing to no one."

44. On or about June 18, 2005, **DOVER PERRY** made a "debt elimination" presentation at a Cutting Edge Seminar, during which he falsely claimed that he had successfully eliminated his student loan debt through the credit restoration process he was selling, when in fact he had defaulted on the debt and the student loans were collection accounts. **PERRY** also falsely claimed to have been a professional football player with the Seattle Seahawks.

45. On or about June 20, 2005, **DOVER PERRY** stated to a potential PQI customer that he held his assets in a "corporation sole" which, he explained, was an ecclesiastical structure. **PERRY** stated he was justified in his use of this structure because he was "doing God's work by teaching people how to get out of debt."

46. On or about June 20, 2005, **DOVER PERRY** falsely stated to a potential PQI customer that: (1) "not one person in Quest has lost a penny to our investments;" (2) if he had his IRS Master File "decoded" through vendor IMF Decoder, he could never be criminally prosecuted for tax evasion; (3) if he would rather "stay in the box," i.e., file income tax returns, then he should get "structured" by **EUGENE CASTERNOVIA** at SORCE and learn how to operate "external to the Internal Revenue Code."

47. On or about June 27, 2005, **JOSEPH McPHILLIPS** sent $12,500.00 to PQI for sales made by David Struckman, who had been indicted in the District of Washington in May 2004.

48. On or about July 28, 2005, **ARNOLD MANANSALA** emailed to a PQI member a Powerpoint Presentation he had created for future presentations. In the Powerpoint, **MANANSALA** stated: (1) "Quest International" is a Panama based IBC with a three-year track record, over 15,000 students, and proven world class contributors; (2) his educational objectives were to teach how to "lawfully keep up to 100% of what you make (personal and business); to protect all assets from Liens & Judgments; to properly structure your corporate and private affairs;" (3) the educational system does not teach how to keep the money you earn, nor to keep other people from that money, including taxation. **MANANSALA** claimed to be capable of securing for his clients a letter from the IRS stating that the student "had no 1040 filing requirement," and that he, himself, was successfully practicing the techniques.

49. On or about August 4, 2005, during a telephone call which included **JOSEPH McPHILLIPS** and David Struckman, Struckman stated that he was in Central America permanently and explained that **McPHILLIPS** assists the clients Struckman brings into PQI. **McPHILLIPS** explained that he was Struckman's proxy.

50. On or about October 8, 2005, **ROBERT PENDELL** advised a potential client as to how to illegally evade paying taxes by setting up offshore entities and appearing to be simply a "salesman" for his company, rather than the owner. **PENDELL** explained that the purpose for the structure was "to keep you from... having your assets sued or seized by the predatory legal authority or taxing authorities that we live under."

51. On or about October 8, 2005, **ROBERT PENDELL** advised a potential client that none of their clients have ever gotten into trouble with the IRS after utilizing SORCE and setting up their offshore corporations. **PENDELL** stated that the government cannot track ownership of their offshore structures because "your name is completely off the business" and all assets belong to the offshore company.

52. From on or about October 23 through 29, 2005, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARNOLD MANANSALA, MICHAEL LEONARD, MARK LEITNER, JOSEPH McPHILLIPS, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Ixtapa, Mexico.

53. From in or about March through November 2005, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $1.5 million from their SPI AmSouth and MYICIS accounts to their accounts at Credicorp Bank in Panama.

54. On or about January 23, 2006, **CLAUDIA HIRMER** approved a flyer which promoted the upcoming Quest Live seminar. The flyer was created by a vendor who promoted tax evasion by espousing the idea that the IRS did not have the legal authority to tax income.

55. On or about February 2, 2006, **CLAUDIA HIRMER and MARK HIRMER** caused a $400,000.00 wire transfer to an attorney representing David Struckman in his criminal case in Seattle, Washington.

56. From on or about February 25 through March 5, 2006, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA, ELLEN STUBENHAUS, ARNOLD MANANSALA, DOVER PERRY** and others conducted a Q3 conference in Malta.

57. On or about May 6, 2006, at a Cutting Edge Seminar, **DOVER PERRY** falsely stated that, through the use of offshore business structures, clients could keep all of their investment returns without taxation.

58. From on or about May 27 through June 4, 2006, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Cancun, Mexico.

59. On or about June 29, 2006, **MARK HIRMER** caused a $55,979.75 [illegible]er's check to be drawn on Regions Bank for the purchase of a 28'3" Sunesta 274 Chaparral boat titled to "Oriskany, LLC."

60. From on or about December 2 through 9, 2006, **CLAUDIA HIRMER, MARK HIRMER** and others conducted a Q2 conference in Cancun, Mexico.

61. From in or about January through April 2006, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $800,000.00 from their MYICIS account to their accounts at Credicorp Bank in Panama.

62. On or about October 30 2006, **CLAUDIA HIRMER and MARK HIRMER** caused a $16,859.83 wire transfer to be sent from their SPI account at

Credicorp Bank in Panama to a title company to pay closing costs associated with a $635,000.00 second mortgage on their personal property located at 511 Dory Avenue, Fort Walton Beach, Florida. The second mortgage was held by Hope International Foundation in Panama, a company the **HIRMERS** controlled.

63. On or about December 29, 2006, **CLAUDIA HIRMER and MARK HIRMER** purchased a $759,557.87 cashier's check, issued to a title company, from Credicorp Bank. The **HIRMERS**, using the name "Country Home Solutions," used the money to purchase their home at 104 Kent Court, Niceville, Florida.

64. From on or about May 14 through 21, 2007, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA, ARNOLD MANANSALA, DOVER PERRY** and others conducted a Q3 conference on a Mediterranean cruise aboard the Galaxy cruise ship.

65. From on or about September 16, 2007, through September 22, 2007, **CLAUDIA HIRMER, MARK HIRMER** and others conducted a Q2 conference in Cancun, Mexico.

66. On or about October 24, 2007, **MARK HIRMER** purchased a $22,730 cashier's check with money previously deposited into the MCD Productions account at SunTrust Bank. The **HIRMERS** used the money to purchase and install a brick paver driveway and patio at their waterfront residence on Dory Avenue.

67. On or about December 28, 2007, **MARK HIRMER**, on behalf of MCD Productions, purchased a SunTrust Bank Official Check for $10,000, payable to his daughter and her husband.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

1. Parts A, C and D of Count One are hereby realleged as if fully set forth herein.

2. That from in or about May 2002 through on or about the date of the return of this Indictment, in the Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,
DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER,
ARTHUR RAMIREZ MERINO
and
JEFFRY JEAN JENKS,

did knowingly combine, conspire, confederate and agree together and with other persons, to conduct and attempt to conduct financial transactions affecting interstate commerce, which funds were in fact derived from specified unlawful activity, that is, Wire Fraud,

knowing that the transactions were designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

All in violation of Title 18, United States Code, Section 1956(h).

COUNT THREE

1. Parts A, C and D of Count One are hereby realleged as if fully set forth herein.

2. That beginning on or about April 15, 2002, through the date of this Indictment, in the Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER
and
MARK STEVEN HIRMER,

did willfully attempt to evade and defeat the payment of a substantial portion of the income taxes due and owing by them to the United States of America for the calendar years 1996 through 2001, in the amount of at least $678,036.40.00 as to **CLAUDIA HIRMER**, and $676,343.30 as to **MARK HIRMER**, by committing at least one act of evasion, including: (1) concealing and attempting to conceal from the Internal Revenue Service the nature and extent of their assets and the location thereof; and (2) placing funds and property in the names of nominees.

All in violation of Title 26, United States Code, Sections 7201 and 2.

COUNTS FOUR THROUGH FIFTEEN

1. Parts A and D of Count One are hereby realleged as if fully set forth herein.

2. That in or about May 2002 through on or about the date of the return of this Indictment, in the Northern District of Florida and elsewhere, the defendants listed below did knowingly transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce writings, signals, pictures and sounds for the purpose of executing a scheme and artifice to defraud, and to obtain money by false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1343.

C. SCHEME AND ARTIFICE

It was part of the scheme and artifice that:

1. Through its vendors, PQI promoted a series of "debt elimination" companies, including "Financial Solutions," owned and operated by **ARTHUR MERINO**, and Debt Relief Services Marketing, LLC, later changed to Consumer Financial Educators, both owned and operated by **JEFFRY JEAN JENKS (hereinafter "JEFFRY JENKS")**. Though competing programs, they were similarly described and promoted. Both **MERINO** and **JENKS** claimed they could, for a fee, provide customers with assistance in legally reducing or eliminating their debt. The programs were marketed primarily to financially distressed people deeply in credit card debt.

2. Some customers were told they could pay the fee with a credit card, because the debt would be eliminated when they followed the offered programs. Once customers paid for the debt elimination programs, they received information which falsely claimed that banks and credit card companies did not have the legal right to extend credit. Therefore, because they extended credit illegally, the debt was not legally owed.

3. As part of the package, customers received form letters to send to their credit card companies, which demanded that their credit balances be reduced to zero because the credit had been illegally extended to them.

4. PQI, through its owners, Executive Council, Qualified Consultants and others, falsely and fraudulently validated, promoted and sold the bogus "debt elimination" systems offered by the aforementioned PQI vendors, by endorsing the vendors, referring customers, arranging for conference calls, programs and seminars.

5. The programs did not work. Customers who participated in the programs did not eliminate their debt, and in fact, were worse off after having challenged their creditors as instructed.

D. WIRE TRANSMISSIONS

On or about the dates listed below, in the Northern District of Florida and elsewhere, the defendants listed below, knowingly transmitted and caused to be transmitted in interstate commerce via electronic mail, the following wire transmissions:

COUNT	DEFENDANTS	DATE	FROM	TO	SUBJECT
FOUR	CLAUDIA HIRMER, JOSEPH McPHILLIPS, ARTHUR MERINO	9/9/2003	D.H.	CLAUDIA HIRMER	"Special 'Two Part' Training this Tuesday and Thursday - can you send this out?"
FIVE	CLAUDIA HIRMER, ELLEN STUBENHAUS, ARTHUR MERINO	9/15/2003	ELLEN STUBENHAUS	CLAUDIA HIRMER	"RE: infor the web site...have you told Brian?"
SIX	CLAUDIA HIRMER, MARK HIRMER, MICHAEL LEONARD, ARTHUR MERINO	2/6/2004	CLAUDIA HIRMER	MARK HIRMER	"From Financial Solutions"
SEVEN	CLAUDIA HIRMER, ELLEN STUBENHAUS, MARK LEITNER, JEFFRY JENKS	3/3/2004	ELLEN STUBENHAUS	CLAUDIA HIRMER	Forwarded "DRSM March Madness" Document
EIGHT	CLAUDIA HIRMER, ARTHUR MERINO	3/6/2004	CLAUDIA HIRMER	ARTHUR MERINO	"Financial Solutions New Call Schedule"
NINE	CLAUDIA HIRMER, ELLEN STUBENHAUS, ARTHUR MERINO, JEFFRY JENKS	7/11/2004	ELLEN STUBENHAUS	CLAUDIA HIRMER	Training schedule for "Power-up & Mindset"

COUNT	DEFENDANTS	DATE	FROM	TO	SUBJECT
TEN	CLAUDIA HIRMER, ELLEN STUBENHAUS, JOSEPH McPHILLIPS, MICHAEL LEONARD	7/16/2004	JOSEPH McPHILLIPS	CLAUDIA HIRMER	"Debt Elimination Scam Alert from Fed & FBI"
ELEVEN	MARK HIRMER, MICHAEL LEONARD, JEFFRY JENKS	3/16/2005	MICHAEL LEONARD	MARK HIRMER	"FedEx package"
TWELVE	JEFFRY JENKS	4/21/2005	JEFFRY JENKS	DRSM Clients	"To Clients of BH"
THIR-TEEN	CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, JOSEPH McPHILLIPS, MICHAEL LEONARD	8/30/2005	JOSEPH McPHILLIPS	MARK HIRMER	"For all EC-Legal Committee Meeting"
FOUR-[illegible]N	ARNOLD MANANSALA, DOVER PERRY	1/24/2006	J.K.	ARNOLD MANANSALA, DOVER PERRY, EUGENE CASTERNOVIA	"Cutting Edge Seminar-Hawaii"
FIFTEEN	MARK LEITNER	1/31/2006	MARK LEITNER	"undisclosed - recipients"	How to Wipe Out your credit card debt w/o bankruptcy"

All in violation of Title 18, United States Code, Sections 1343 and 2.

CRIMINAL FORFEITURE

The allegations contained in Count Two of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures to the United States

pursuant to the provisions of Title 18, United States Code, Section 982(a)(2).

Upon the convictions of the violations alleged in Count Two of this Indictment, the defendants,

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,
DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER,
ARTHUR RAMIREZ MERINO
and
JEFFRY JEAN JENKS,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any and all property, real or personal, involved in the aforementioned offenses and all property traceable to such property as a result of such violations of Title 18, United States Code, Section 1956; including, but not limited to.

1. $50,664,000 in United States Currency;

2. The real property commonly known as 511 Dory Avenue, Fort Walton Beach, Florida, and more particularly described as:

LOT 220, BLOCK 5, SANTA ROSA ISLAND, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 2,

PAGE 84, OF THE PUBLIC RECORDS OF OKALOOSA COUNTY, FLORIDA;

3. The real property commonly known as 838 Tropic Avenue, Fort Walton Beach, Florida, and more particularly described as:

LOT 500, BLOCK 8, SANTA ROSA ISLAND, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 190, OF THE PUBLIC RECORDS OF OKALOOSA COUNTY, FLORIDA;

4. The real property commonly known as 104 Kent Court, Niceville, Florida, and more particularly described as:

LOT 6, BLOCK G, ROCKY BAYOU ESTATES UNIT #3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, PAGE 27, OF THE PUBLIC RECORDS OF OKALOOSA COUNTY, FLORIDA;

5. Humboldt Merchant Services Account Number 4194043010105298, in the name of MCD Productions;

6. Beach Community Bank, Account # 02003, in the name of Mark S. Hirmer;

7. Beach Community Bank, Account # 01467, in the name of Mark S. Hirmer;

8. Trustmark Bank, Account #7100058727, in the name of Synergy

Productions International;

9. Suntrust Bank, Account # 1000007027146 in the name of Mark S. Hirmer dba MCD Productions; and

10. First City Bank, Account # 902624 in the name of Mark S. Hirmer.

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section

982(b)(1), to seek forfeiture of any other property of said defendants up to the value of the above-described property.

All in violation of Title 18, United States Code, Section 982(a).

A TRUE BILL:

FOREPERSON

8-21-2008
DATE

THOMAS F. KIRWIN
Acting United States Attorney

MICHELLE M. HELDMYER
Assistant United States Attorney

TIFFANY H. EGGERS
Assistant United States Attorney

Exhibit G:

Ex.G: **IRS 71 page doc**, downloaded **November 8, 2008**: List of frivolous arguments according to the IRS published November 30, 2007.

http://www.**irs.gov**/newsroom/article/0,,id=136337,00.html
http://www.**irs.gov**.pub.irs-utl/friv_tax.pdf

Exhibit: G

THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS

NOVEMBER 30, 2007

THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS

NOVEMBER 30, 2007

This responds to some of the more common frivolous "legal arguments" made by individuals and groups who oppose compliance with the federal tax laws. The first section groups these arguments under six general categories, with variations within each category. Each contention is briefly explained, followed by a discussion of the legal authority that rejects the contention. The second section responds to some of the more common frivolous arguments made in collection due process cases brought pursuant to sections 6320 or 6330. These arguments are grouped under ten general categories and contain a brief description of each contention followed by a discussion of the correct legal authority. A final section explains the penalties that the courts may impose on those who pursue tax cases on frivolous grounds. It should be noted that the cases cited as relevant legal authority are illustrative and are not intended to provide an all-inclusive list relating to frivolous tax arguments.

I. FRIVOLOUS TAX ARGUMENTS IN GENERAL

A. The Voluntary Nature of the Federal Income Tax System

1. Contention: The filing of a tax return is voluntary.

Some assert that they are not required to file federal tax returns because the filing of a tax return is voluntary. Proponents point to the fact that the IRS itself tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, the Supreme Court's opinion in Flora v. United States, 362 U.S. 145, 176 (1960), is often quoted for the proposition that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint."

The Law: The word "voluntary," as used in Flora and in IRS publications, refers to our system of allowing taxpayers initially to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them from the outset. The requirement to file an income tax return is not voluntary and is clearly set forth in sections 6011(a), 6012(a), et seq., and 6072(a). See also Treas. Reg. § 1.6011-1(a).

Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return. Failure to file a tax return could subject the non-complying individual to criminal penalties, including fines and imprisonment, as well as civil penalties. In United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986), the court clearly states, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary

collection . . . . The IRS' efforts to obtain compliance with the tax laws are entirely proper." The IRS issued Revenue Ruling 2007-20, 2007-14 I.R.B. 863, warning taxpayers of the consequences of making this frivolous argument.

In August 2005, the Justice Department announced that Royal Lamarr Hardy was sentenced to a 156-month prison term for, among other things, selling a tax evasion scheme called the "Reliance Defense" that incorrectly asserted the income tax laws were voluntary (i.e., the laws imposed no legal obligation to pay tax or file a return). Hardy was also ordered to pay costs of prosecution in the amount of $59,267.88, and restitution to the IRS for $197,555. See 2005 TNT 169-12 (Aug. 31, 2005).

In August 2007, a federal court in New York permanently barred Robert L. Schulz of Queensbury, N.Y., and his organizations, We the People Congress and We the People Foundation, from promoting a tax scheme that helped employers and employees improperly stop tax withholding from wages on the false premise that federal income taxation is voluntary. The court concluded that the First Amendment did not protect the two organizations that operate the website, or their founder, because the site incited criminal conduct. The court also ordered that the web site that sold the materials stating that individuals can legally stop paying taxes be shut. See http://www.usdoj/tax/txdv07214.htm, and http://www.usdoj.gov/tax/txdv07595.htm

Relevant Case Law:

Helvering v. Mitchell, 303 U.S. 391, 399 (1938) – the U.S. Supreme Court stated that "[i]n assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts . . . in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes [either criminal or civil] sanctions."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the court held that "[a]ny assertion that the payment of income taxes is voluntary is without merit."

United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986) – the court upheld a conviction for willfully failing to file a return, stating that the premise "that the tax system is somehow 'voluntary' . . . is incorrect."

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the court upheld conviction and fines imposed for willfully failing to file tax returns, stating that the claim that filing a tax return is voluntary "was rejected in United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), wherein the court described appellant's argument as 'an imaginative argument, but totally without arguable merit.'"

Woods v. Commissioner, 91 T.C. 88, 90 (1988) – the court rejected the claim that reporting income taxes is strictly voluntary, referring to it as a "'tax protester' type" argument, and found Woods liable for the penalty for failure to file a return.

Johnson v. Commissioner, T.C. Memo. 1999-312, 78 T.C.M. (CCH) 468, 471 (1999) – the court found Johnson liable for the failure to file penalty and rejected his argument "that the tax system is voluntary so that he cannot be forced to comply" as "frivolous."

2. Contention: Payment of tax is voluntary.

In a similar vein, some argue that they are not required to pay federal taxes because the payment of federal taxes is voluntary. Proponents of this position argue that our system of taxation is based upon voluntary assessment and payment. They frequently claim that there is no provision in the Internal Revenue Code or any other federal statute that requires them to pay or makes them liable for income taxes, and they demand that the IRS show them the law that imposes tax on their income. The stance that is taken is that until the IRS can prove to these taxpayers' satisfaction, which is effectively impossible because they never will be satisfied, the existence and applicability of the income tax laws, they will not report or pay income taxes. These taxpayers reflexively dismiss any attempt by the IRS to identify the laws, thereby continuing the cycle. The IRS has issued Revenue Ruling 2007-20, 2007-14 I.R.B. 863, discussing this frivolous position at length and warning taxpayers of the consequences of asserting it.

The Law: The requirement to pay taxes is not voluntary and is clearly set forth in section 1 of the Internal Revenue Code, which imposes a tax on the taxable income of individuals, estates, and trusts as determined by the tables set forth in that section. (Section 11 imposes a tax on the taxable income of corporations.)

Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns. Failure to pay taxes could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties.

In discussing section 6151, the Eighth Circuit Court of Appeals stated that "when a tax return is required to be filed, the person so required 'shall' pay such taxes to the internal revenue officer with whom the return is filed at the fixed time and place. The sections of the Internal Revenue Code imposed a duty on Drefke to file tax returns and pay the . . . tax, a duty which he chose to ignore." United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983).

In United States v. Kuglin, No. 03-20111 (W.D. Tenn. Aug. 8, 2003), Vernice B. Kuglin faced criminal charges for falsifying Forms W-4 and

failing to pay taxes on $920,000 of income between 1996 and 2001, but was acquitted by a federal jury. Kuglin argued that she attempted to determine whether the income was taxable but the Service did not respond to her letters. Government officials issued press releases making it clear that the outcome in Kuglin should be treated as an "aberration" and noting that persons acquitted of criminal tax violations are not relieved of their obligation to pay taxes due. See 2003 TNT 155-12 (Aug. 11, 2003); 2003 TNT 155-13 (Aug. 11, 2003); 2003 TNT 158-2 (Aug. 14, 2003).

The defendant in United States v. Brunet, No. 03-00057 (M.D. Tenn. March 12, 2004), argued he could not find any information that would lead him to conclude the Internal Revenue Code made him liable to file income tax returns or pay taxes. In stark contrast to Kuglin, the jury returned guilty verdicts against Brunet on four counts of tax evasion and the court sentenced him to serve 27 months in prison. See 2004 TNT 51-33 (March 12, 2004).

There have been no civil cases where the Service's lack of response to a taxpayer's inquiry has relieved the taxpayer of the duty to pay tax due under the law. Courts have in rare instances waived civil penalties because they have found that a taxpayer relied on a Service misstatement or wrongful misleading silence with respect to a factual matter. Such an estoppel argument does not, however, apply to a legal matter such as whether there is legal authority to collect taxes. See, e.g., McKay v. Commissioner, 102 T.C. 465 (1994), rev'd as to other issues, 84 F.3d 433 (5th Cir. 1996). Kuglin's case, discussed above, did not prove to be the exception. Despite her acquittal of criminal charges, on September 12, 2004, Kuglin entered a settlement with the IRS in the Tax Court in which she agreed to pay more than half a million dollars in back taxes and penalties. Kuglin v. Commissioner, Docket No. 21743-03; see 2004 TNT 177-6 (Sept. 13, 2004).

In August 2004, an appellate court affirmed a federal district court preliminary injunction barring Irwin Schiff, Cynthia Neun, and Lawrence N. Cohen from selling a tax scheme that fraudulently claimed that payment of federal income tax is voluntary. United States v. Schiff, 379 F.3d 621 (9th Cir. 2004); see http://www.usdoj.gov/tax/txdv04551.htm. Also, in October 2005, the trio was convicted by a Las Vegas jury for various criminal charges relating to the federal income tax laws. See 2005 TNT 205-4 (Oct. 25, 2005). Schiff received a sentence of more than 12 years in prison and was ordered to pay more than $4.2 million in restitution to the IRS; Neun received a sentence of nearly 6 years and was ordered to pay $1.1 million in restitution to the IRS; and, Cohen received a sentence of nearly 3 years and was ordered to pay $480,000 in restitution to the IRS. See http://www.usdoj.gov/opa/pr/2006/February/06_tax_098.html; 2006 TNT 38-67 (Feb. 24, 2006); 2006 TNT 24-62 (Feb. 3, 2006).

Earlier this year, a dentist, Dr. Elaine Brown, and her husband, Ed Brown, were prosecuted in a federal district court in New Hampshire of conspiracy to defraud the federal government and, as to Dr. Brown, income tax evasion, among other charges. These taxpayers claimed that they were not subject to taxation and that the IRS never responded to their demands for a legal explanation. In an opening statement to the jury, Ed Brown proclaimed, "We will once and for all show beyond the shadow of a doubt . . . that the federal income tax system is a fraud." They failed to do so, however, as the jury convicted the Browns on all charges. See http://www.usdoj.gov/tax/usaopress/2007/txdv07WEM_Browns.pdf. After being sentenced in April, they refused to surrender themselves to authorities and were arrested at their home on October 4, 2007, to begin serving their prison terms.

Relevant Case Law:

United States v. Bressler, 772 F.2d 287, 291 (7th Cir. 1985) – the court upheld Bressler's conviction for tax evasion, noting, "[he] has refused to file income tax returns and pay the amounts due not because he misunderstands the law, but because he disagrees with it . . . . [O]ne who refuses to file income tax returns and pay the tax owing is subject to prosecution, even though the tax protester believes the laws requiring the filing of income tax returns and the payment of income tax are unconstitutional."

Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988) – the court rejected Wilcox's argument that payment of taxes is voluntary for American citizens, stating that "paying taxes is not voluntary" and imposing a $1,500 penalty against Wilcox for raising frivolous claims.

Schiff v. United States, 919 F.2d 830, 833 (2d Cir. 1990), cert. denied, 501 U.S. 1238 (1991) – the court rejected Schiff's arguments as meritless and upheld imposition of the civil fraud penalty, stating "[t]he frivolous nature of this appeal is perhaps best illustrated by our conclusion that Schiff is precisely the sort of taxpayer upon whom a fraud penalty for failure to pay income taxes should be imposed."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the court stated that the "[taxpayers'] claim that payment of federal income tax is voluntary clearly lacks substance" and imposed sanctions in the amount of $1,500 "for bringing this frivolous appeal based on discredited, tax-protester arguments."

Packard v. United States, 7 F. Supp. 2d 143, 145 (D. Conn. 1998) – the court dismissed Packard's refund suit for recovery of penalties for failure to pay income tax and failure to pay estimated taxes where the taxpayer contested the obligation to pay taxes on religious grounds, noting that "the ability of the Government to function could be impaired if persons could

refuse to pay taxes because they disagreed with the Government's use of tax revenues."

Horowitz v. Commissioner, T.C. Memo. 2006-91, 91 T.C.M. (CCH) 1120 – the court imposed sanctions in the amount of $10,000 in rejecting the taxpayer's arguments, including the frivolous claim that he could find no statute or regulation making him liable for an income tax.

Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was frivolous citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.

3. Contention: Taxpayers can reduce their federal income tax liability by filing a "zero return."

Some taxpayers are attempting to reduce their federal income tax liability by filing a tax return that reports no income and no tax liability (a "zero return") even though they have taxable income. Many of these taxpayers also request a refund of any taxes withheld by an employer. These individuals typically attach to the zero return a Form W-2, or other information return that reports income and income tax withholding, and rely on one or more of the frivolous arguments discussed throughout this outline in support of their position.

The Law: There is no authority that permits a taxpayer that has taxable income to avoid income tax by filing a zero return. Section 61 provides that gross income includes all income from whatever source derived, including compensation for services. Courts have repeatedly penalized taxpayers for making the frivolous argument that the filing of a zero return can allow a taxpayer to avoid income tax liability, or permit a refund of tax withheld by an employer. Courts have also imposed the frivolous return and failure to file penalties because such forms do not evidence an honest and reasonable attempt to satisfy the tax laws or contain sufficient data to calculate the tax liability. The IRS issued Revenue Ruling 2004-34, 2004-1 C.B. 619, warning taxpayers of the consequences of making this argument. Furthermore, the inclusion of the phrase "nunc pro tunc," or other legal phrase, does not have any legal effect and does not serve to validate a zero return. See Rev. Rul. 2006-17, 2006-15 I.R.B. 748.

In December 2005, a federal district court in Arizona permanently barred Beverly J. Hill and Darrell J. Hill (individually and doing business as Superior Claims Management) from, among other things, preparing or filing federal tax returns for any person or entity other than themselves.

The court found that the couple filed zero returns on behalf of their clients based on various frivolous tax arguments, thus interfering with the administration and enforcement of the internal revenue laws. United States v. Hill, 97 A.F.T.R.2d (RIA) 548, 2005 WL 3536118 (D. Ariz. 2005); see also, 2005 TNT 248-8 (Dec. 27, 2005).

In April 2006, a federal district court in Michigan permanently barred Charles Conces from promoting several fraudulent tax schemes, including one in which he filed "zero returns" on behalf of his clients on the faulty premise that income is not taxable. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_243.html; see also 2006 TNT 80-36 (Apr. 25, 2006). In March 2007, U.S. Marshals arrested Conces. The arrest resulted from a federal judge's order on February 23, 2007, finding Conces in civil contempt of court for failing to obey a court order entered on February 8. The February 8 order compelled Conces to disclose to the government the identities of certain persons for whom he drafted or provided advice regarding federal income taxes, the identities of the persons who are responsible for his website, and all documents that he drafted or assisted in drafting for these persons. The order was affirmed on appeal, United States v. Conces, ___F.3d __, 2007 WL 3406765 (6th Cir. 2007). Conces refused to disclose the identities and documents as ordered by the court. See http://www.usdoj.gov/tax/txdv07121.htm.

Relevant Case Law:

Little v. United States, 2005 WL 2989696, at *4 (M.D.N.C. 2005) – taxpayer filed income tax returns showing "0" income and "0" tax liability, even though his W-2 Forms showed taxable income. In response, the IRS imposed penalties for submitting frivolous returns in violation of 26 U.S.C. § 6702. The court noted that multiple other courts have upheld such a penalty assessment in similar cases where taxpayers filed a "zero return" based on various "tax protester" arguments. Determining that plaintiff failed to raise any genuine issues of material fact, the court upheld the penalties.

Schultz v. United States, 2005 WL 1155203, at *3 (W.D. Mich. 2005) – "Courts have consistently found the arguments made by Plaintiffs, or ones very similar, in support of an all zero return to be frivolous."

Yuen v. United States, 290 F.Supp.2d 1220,1224 (D. Nev. 2003) – taxpayer's tax returns were substantially incorrect and frivolous, when he filed returns with zeros on nearly every line, and thus, the court decided, assessments of frivolous return penalties were valid.

Gillett v. United States, 233 F.Supp. 2d 874, 881 (W.D. Mich. 2002) – the court stated "[n]umerous federal courts have upheld the imposition of the $500 sanction by the IRS pursuant to 26 U.S.C. § 6702(a) [for frivolous

returns], where, as here, a tax form is filed stating that an individual had no income, but the attached W-2 forms show wages, tips, or other compensation of greater than zero."

United States v. Schiff, et al., 379 F.3d 621 (9th Cir. 2004) – the court of appeals upheld a federal district court preliminary injunction barring Irwin Schiff and two associates from promoting their "zero-income" tax return theories through his bookstore and three Internet websites. As the court noted, Mr. Schiff "has a long history of opposition to the federal income tax laws" and has never been successful in court with his theory that "the federal income tax is voluntary."

Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was frivolous citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.

Halcott v. Commissioner, T.C. Memo. 2004-214 – the court held the taxpayer liable for the penalty under section 6651(a)(1) for failure to timely file his return where the taxpayer filed a "zero return."

Hill v. Commissioner, T.C. Memo. 2003-144, 85 T.C.M. (CCH) 1328, 1331 (2003) – the court imposed a $15,000 penalty under section 6673 because the taxpayer took the frivolous "zero return" position.

Rayner v. Commissioner, T.C. Memo. 2002-30, 83 T.C.M. (CCH) 1161 (2002) – the court imposed a $5,000 penalty under section 6673 where the taxpayer argued the frivolous "zero return" position.

4. Contention: The IRS must prepare federal tax returns for a person who fails to file.

Proponents of this argument contend that section 6020(b) obligates the IRS to prepare and sign under penalties of perjury a federal tax return for a person who does not file a return. Thus, those who subscribe to this contention claim that they are not required to file a return for themselves.

The Law: Section 6020(b) merely provides the IRS with a mechanism for determining the tax liability of a taxpayer who has failed to file a return. Section 6020(b) does not require the IRS to prepare or sign under penalties of perjury tax returns for persons who do not file and it does not excuse the taxpayer from civil penalties or criminal liability for failure to file.

Relevant Case Law:

United States v. Cheek, 3 F.3d 1057, 1063 (7th Cir. 1993) – the court held the district court did not err when it instructed the jury that defendant's belief that Section 6020 permitted the Secretary of the Treasury to prepare a tax return for a person did not negate "in any way" the obligation to file a tax return.

In re Bergstrom, 949 F.2d 341, 343 (10th Cir. 1991) – recognized that "[c]ourts have held that 26 U.S.C. § 6020(b) provides the IRS with some recourse if a taxpayer fails to file a return as required under 26 U.S.C. § 6012, but that it does not excuse a taxpayer from the filing requirement."

United States v. Barnett, 945 F.2d 1296, 1300 (5th Cir. 1991) - where defense counsel in prosecution for willful failure to file individual federal income tax returns raised inference that the IRS actually had some statutory duty to file returns for delinquent taxpayers, court properly instructed jury that IRS has no such duty.

Schiff v. United States, 919 F.2d 830, 832 (2d Cir. 1990) – the court rejected the taxpayer's argument that the IRS must prepare a substitute return pursuant to section 6020(b) prior to assessing deficient taxes, stating "[t]here is no requirement that the IRS complete a substitute return."

United States v. Lacy, 658 F.2d 396, 397 (5th Cir. 1981) – the court, in upholding the taxpayer's conviction for willfully and knowingly failing to file a return, stated that " . . . the purpose of section 6020(b)(1) is to provide the Internal Revenue Service with a mechanism for assessing the civil liability of a taxpayer who has failed to file a return, not to excuse that taxpayer from criminal liability which results from that failure."

Moore v. Commissioner, 722 F.2d 193, 196 (5th Cir. 1984) – the court stated that "section [6020(b)] provides the Secretary with some recourse should a taxpayer fail to fulfill his statutory obligation to file a return, and does not supplant the taxpayer's original obligation to file established by 26 U.S.C. § 6012."

Stewart v. Commissioner, T.C. Memo. 2005-212, 90 T.C.M. (CCH) 269 (2005) – the court found that the IRS need not prepare a substitute return in order to determine a deficiency where the taxpayer has not filed a return for the year at issue.

5. Contention: Compliance with an administrative summons issued by the IRS is voluntary.

Some summoned parties may assert that they are not required to respond to or comply with an administrative summons. Proponents of this position argue that a summons thus can be ignored. The Second Circuit's opinion in Schulz v. I.R.S., 413 F.3d 297 (2d Cir. 2005) ("Schulz II") is often cited to support this proposition.

The Law: A summons is an administrative device with which the IRS can summon persons to appear, testify, and produce documents. The IRS is statutorily authorized to inquire about any person who may be liable to pay any internal revenue tax, and to summons a witness to testify or to produce books, papers, records, or other data that may be relevant or material to an investigation. 26 U.S.C. § 7602; United States v. Powell, 379 U.S. 48 (1964). Sections 7402(b) and 7604(a) of the Internal Revenue Code grant jurisdiction to district courts to enforce a summons, and section 7604(b) governs the general enforcement of summonses by the IRS.

Section 7604(b) allows courts to issue attachments, consistent with the law of contempt, to ensure attendance at an enforcement hearing "[i]f the taxpayer has contumaciously refused to comply with the administrative summons and the [IRS] fears he may flee the jurisdiction." Powell, 379 U.S. at 58 n.18; see also Reisman v. Caplin, 375 U.S. 440, 448-49 (1964) (noting that section 7604(b) actions are in the nature of contempt proceedings against persons who "wholly made default or contumaciously refused to comply," with an administrative summons issued by the IRS). Under section 7604(b), the courts may also impose contempt sanctions for disobedience of an IRS summons.

Failure to comply with an IRS administrative summons also could subject the non-complying individual to criminal penalties, including fines and imprisonment. 26 U.S.C. § 7210. While the Second Circuit held in Schulz II that, for due process reasons, the government must first seek judicial review and enforcement of the underlying summons and to provide an intervening opportunity to comply with a court order of enforcement prior to seeking sanctions for noncompliance, the court's opinion did not foreclose the availability of prosecution under section 7210.

Relevant Case Law:

United States v. Becker, 58-1 U.S.T.C. ¶ 9403, at 68,062-68,064 (S.D.N.Y. 1958), aff'd, 259 F.2d 869 (2d Cir.) (per curiam), cert. denied, 258 U.S. 929 (1959) – In Becker, the defendant failed to produce certain books and records specified in an IRS summons because, he claimed, the books and records had been destroyed by fire. The government filed an information on January 10, 1958, in which it charged that Becker, the defendant, had violated 26 U.S.C. § 7210. Based upon the evidence presented at trial (including the fact that some of the specified books were subsequently produced in compliance with a grand jury subpoena), the district court found that Becker had been duly summoned and, as a fact beyond a reasonable doubt, had willfully and knowingly neglected to produce certain books and papers called for by a summons served upon him by a special agent of the IRS. Becker, 58-1 U.S.T.C. ¶ 9403, at 68,064. The court therefore found Becker guilty of the charge under section 7210. Id.

Schulz v. I.R.S., 413 F.3d 297 (2d Cir. 2005) ("Schulz II") – the court, upholding its prior per curiam opinion, reported at Schulz v. I.R.S., 395 F.3d 463 (2d Cir. 2005) ("Schulz I"), held that, based upon constitutional due process concerns, an indictment under 26 U.S.C. § 7210 shall not lie and contempt sanctions under 26 U.S.C. § 7604(b) shall not be levied based on disobedience of an IRS summons until that summons has been enforced by a federal court order and the summoned party, after having been given a reasonable opportunity to comply with the court's order, has refused. The court noted that "[n]either this opinion nor Schulz I prohibits the issuance of pre-hearing attachments consistent with due process and the law of contempts." Schulz II, 413 F.3d at 304.

B. The Meaning of Income: Taxable Income and Gross Income

1. Contention: Wages, tips, and other compensation received for personal services are not income.

This argument asserts that wages, tips, and other compensation received for personal services are not income, because there is allegedly no taxable gain when a person "exchanges" labor for money. Under this theory, wages are not taxable income because people have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed. A variation of this argument misconstrues section 1341, which deals with computations of tax where a taxpayer restores a substantial amount held under claim of right, to somehow allow a deduction claim for personal services rendered.

Another similar argument asserts that wages are not subject to taxation where a person has obtained funds in exchange for their time. Under this theory, wages are not taxable because the Code does not specifically tax these so-called "time reimbursement transactions." Some take a different approach and argue that the Sixteenth Amendment to the United States Constitution did not authorize a tax on wages and salaries, but only on gain or profit.

The Law: For federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Any income, from whatever source, is presumed to be income under section 61, unless the taxpayer can establish that it is specifically exempted or excluded. In Reese v. United States, 24 F.3d 228, 231 (Fed. Cir. 1994), the court stated, "an abiding principle of federal tax law is that, absent an enumerated exception, gross income means all income from whatever source derived." The IRS issued Revenue Ruling 2007-19, 2007-14 I.R.B. 843, advising taxpayers that wages and other compensation received in exchange for personal services are taxable income and warning of the consequences of making frivolous arguments to the contrary.

Section 1341 and the cases interpreting it require taxpayers to return funds previously reported as income before they can claim a deduction under claim of right. To have the right to a deduction, the taxpayer should appear to have an unrestricted right to the income in question. See Dominion Resources, Inc. v. United States, 219 F.3d 359 (4th Cir. 2000). It is a frivolous argument to claim a section 1341 deduction when there has been no repayment by the taxpayer of an amount previously reported as income. The Internal Revenue Service issued Revenue Ruling 2004-29, 2004-1 C.B. 627, warning taxpayers of the consequences of making this frivolous argument.

The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since that time, the courts have consistently upheld the constitutionality of the federal income tax. For a further discussion of the constitutionality of the federal income tax laws, see section I.D. of this outline.

All compensation for personal services, no matter what the form of payment, must be included in gross income. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed in the future. Furthermore, criminal and civil penalties have been imposed against individuals relying upon this frivolous argument.

Taxpayers who assert the position that wages are not taxable income, or other frivolous positions, may later claim that they were ignorant of or did not purposely disregard the requirements of the tax laws, such as the requirements to report wages and to withhold and pay taxes. Also, a handful of taxpayers who are criminally charged with violations of the internal revenue laws have avoided conviction.

For instance, in October 2006, Tommy K. Cryer was charged with two counts of tax evasion. Mr. Cryer asserted that there was no taxable gain when a person "exchanges" labor for money. Mr Cryer was subsequently acquitted on both criminal counts. See http://www.usdoj.gov/usao/law/news/wdl20061026.pdf

Taxpayers should not mistake these cases for an indication that frivolous positions that lead to criminal acquittals are legitimate or that the outcome of other cases will protect a taxpayer from sanctions resulting from noncompliance. Furthermore, while a few defendants have prevailed, the vast majority are convicted. Also, even though a taxpayer may be acquitted of criminal charges of noncompliance with Federal tax laws, the

Service is still free to pursue any underlying tax liability and is not barred from determining civil penalties. See Helvering v. Mitchell, 303 U.S. 391 (1938); Price v. Commissioner, T.C. Memo. 1996-204.

In November 2004, a federal district court in Ohio barred Michael A. Allamby from preparing federal tax returns and representing taxpayers before the IRS. Mr. Allamby erroneously interpreted the instructions to certain federal tax forms as requiring individuals to report their wages as income only if they invested the wages to earn income. See http://www.usdoj.gov/tax/txdv04733.htm; see also 2004 TNT 215-24 (Nov. 4, 2004). Also, in May 2005, a federal district court in Louisiana permanently barred Richard A. Fuselier and Richard J. Ortt and their organization, Compensation Consultants, from preparing tax returns and promoting tax schemes, such as the "not for profit" scheme, which was based on the premise that wages cannot be taxed. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_085.htm; see also 2005 TNT 94-16 (May 16, 2005).

In January 2005, a federal district court in California permanently enjoined Joseph O. Saladino, founder of an organization known as the Freedom and Privacy Committee, from promoting two schemes: the "claim of right" program and the "corporation sole" scheme (discussed below in this outline). See http://www.usdoj.gov/tax/txdv05005.htm; see also 2005 TNT 15-22 (Jan. 24, 2005). Also, in January 2005, a federal district court in North Carolina permanently barred Frank D. Perkinson from selling the "claim of right" program and the "corporation sole" scheme. See http://www.usdoj.gov/opa/pr/2005/January/05_tax_005.htm; see also 2005 TNT 5-16 (Jan. 6, 2005).

In June 2006, Richard M. Blackstock was convicted on thirty-two counts of assisting in the preparation of fraudulent returns based on his involvement in filing various returns claiming deductions for wages, salaries and other compensation under the frivolous "claim of right" theory. See http://www.usdoj.gov/tax/usaopress/2006/txdv06Blackstock_USAO_OK.wpd; see also 2006 TNT129-31 (Jun. 23, 2006).

Relevant Case Law:

Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429-30 (1955) – referring to the statute's words "income derived from any source whatever," the Supreme Court stated, "this language was used by Congress to exert in this field 'the full measure of its taxing power.' . . . And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."

Commissioner v. Kowalski, 434 U.S. 77 (1977) – the Supreme Court found that payments are considered income where the payments are

undeniably accessions to wealth, clearly realized, and over which a taxpayer has complete dominion.

Cheek v. United States, 498 U.S. 192 (1991) – the Supreme Court reversed and remanded Cheek's conviction of willfully failing to file federal income tax returns and willfully attempting to evade income taxes solely on the basis of erroneous jury instructions. The Court noted, however, that Cheek's argument, that he should be acquitted because he believed in good faith that the income tax law is unconstitutional, "is unsound, not because Cheek's constitutional arguments are not objectively reasonable or frivolous, which they surely are, but because the [law regarding willfulness in criminal cases] does not support such a position." Id. (emphasis added). On remand, Cheek was convicted on all counts and sentenced to jail for a year and a day. Cheek v. United States, 3 F.3d 1057 (7th Cir. 1993), cert. denied, 510 U.S. 1112 (1994).

United States v. Becker, 965 F.2d 383, 389 (7th Cir. 1992) – the court found defendant's contention that wages are not income to be "ridiculous."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991) – in rejecting defendant's argument that the revenue laws of the United States do not impose a tax on income, the court recognized the "Internal Revenue Code imposes a tax on all income."

United States v. Connor, 898 F.2d 942, 943-44 (3d Cir.), cert. denied, 497 U.S. 1029 (1990) – the court stated that "[e]very court which has ever considered the issue has unequivocally rejected the argument that wages are not income."

Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1981) – the court rejected as "meritless" the taxpayer's contention that the "exchange of services for money is a zero-sum transaction . . . ."

Stelly v. Commissioner, 761 F. 2d 1113 (5th Cir. 1985) – the Fifth Circuit affirmed the Tax Court's holding against the taxpayer's argument that taxing wage and salary income is a violation of the constitution because compensation for labor is an exchange, not gain. The Fifth Circuit also fined the taxpayer for bringing a frivolous appeal.

United States v. White, 769 F. 2d 511 (8th Cir. 1985) – the court issued a permanent injunction to prevent the promotion of the argument that there is no tax imposed on an exchange of property (labor) in an equal exchange for property (wages).

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the court upheld conviction and fines imposed for willfully failing to file tax returns, stating that the taxpayer's contention that wages and salaries are not income within the meaning of the Sixteenth Amendment is "totally lacking in merit."

United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) – the court affirmed Romero's conviction for willfully failing to file tax returns, finding, in part, that "[t]he trial judge properly instructed the jury on the meaning of ['income' and 'person']. Romero's proclaimed belief that he was not a 'person' and that the wages he earned as a carpenter were not 'income' is fatuous as well as obviously incorrect."

Abdo v. United States, 234 F. Supp. 2d 553 (M.D. N.C. 2002), aff'd, 2003-1 U.S.T.C. (CCH) ¶ 50,483 (4th Cir. 2003) – the tax preparer prepared returns based on the argument that labor is an exchange for wages and not taxable. The court cited Connor, supra, when finding that the tax preparer misstated the law.

McCoy v. United States, 88 A.F.T.R.2d (RIA) 7116, 2001 U.S. Dist. LEXIS 18986 (N.D. Tex. Nov. 16, 2001) – the court rejected the taxpayer's argument that wages received were not income and described this position as meritless.

Sumter v. United States, 61 Fed. Cl. 517, 523 (2004) – the court found the taxpayer's "claim of right" argument as "devoid of any merit" and that section 1341 only applies to situations in which the claimant is compelled to return the taxed item because of a mistaken presumption that the right held was unrestricted and, thus, the item was previously reported, erroneously, as taxable income. Section 1341 was inapplicable to Ms. Sumter, because she had a continuing, unrestricted claim of right to her salary income and had not been compelled to repay that income in a later tax year.

Abrams v. Commissioner, 82 T.C. 403, 413 (1984) – the court rejected the argument that wages are not income, sustained the failure to file penalty, and awarded damages of $5,000 for pursuing a position that was "frivolous and groundless . . . and maintained primarily for delay."

Reading v. Commissioner, 70 T.C. 730 (1978), aff'd, 614 F.2d 159 (8th Cir. 1980) – the court said the entire amount received from the sale of one's services constitutes income within the meaning of the Sixteenth Amendment.

Cullinane v. Commissioner, T.C. Memo. 1999-2, 77 T.C.M. (CCH) 1192, 1193 (1999) – noting that "[c]ourts have consistently held that compensation for services rendered constitutes taxable income and that taxpayers have no tax basis in their labor," the court found Cullinane liable for the failure to file penalty, stating that "[his] argument that he is not required to pay tax on compensation for services does not constitute reasonable cause."

Wheelis v. Commissioner, T.C. Memo. 2002-102, 83 T.C.M. (CCH) 1543-45 (2002) – the court rejected the taxpayer's frivolous argument that his wages were not taxable based on his belief that "[p]roperty (money)

exchanged for property (labor not subject to tax)" is not subject to income taxation. The court stated that such claims have been "consistently and thoroughly rejected" by the courts and imposed a penalty against Wheelis in the amount of $10,000 for making frivolous arguments.

Carskadon v. Commissioner, T.C. Memo. 2003-237, 86 T.C.M. (CCH) 234, 236 – the court rejected the taxpayer's frivolous argument that "wages are not taxable because the Code, which states what is taxable, does not specifically state that 'time reimbursement transactions,' a term of art coined by [taxpayers], are taxable." The court imposed a $2,000 penalty against the taxpayers for raising "only frivolous arguments which can be characterized as tax protester rhetoric."

2. Contention: Only foreign-source income is taxable.

Some maintain that there is no federal statute imposing a tax on income derived from sources within the United States by citizens or residents of the United States. They argue instead that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. The premise for this argument is a misreading of sections 861, et seq., and 911, et seq., as well as the regulations under those sections.

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." I.R.C. sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable, nor do they determine or define gross income. These frivolous assertions are clearly contrary to well-established legal precedent.

In March 2005, a federal district court in Florida barred Gregory T. Mayer from preparing false or fraudulent returns and selling fraudulent tax schemes relying upon, among other things, the frivolous section 861 argument, which falsely claims that income from sources in the United States is not subject to federal income tax. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_119.htm; see also 2005 TNT 49-63 (Mar. 14, 2005). In August 2005, a federal district court in Florida permanently barred Carel "Chad" Prater and Richard Cantwell from promoting tax-fraud scams relying on the section 861 argument. See http://www.usdoj.gov/opa/pr/2005/September/05_tax_505.html; see also 2005 TNT 204-51 (Aug. 30, 2005).

In May 2005, the Tenth Circuit affirmed the conviction and 108 month sentence of Ernest G. Ambort for willfully aiding and assisting in the preparation of false income tax returns. The basis of the conviction involved seminars conducted by Mr. Ambort where he falsely instructed the attendees that they could claim to be nonresident aliens with no domestic source income, regardless of place of birth, so that they were exempt from most federal income taxes. United States v. Ambort, 405 F.3d 1109 (10th Cir. 2005); see also 2005 TNT 86-10 (May 3, 2005).

In August 2005, a Philadelphia jury convicted Larken Rose on five counts of willful failure to file federal income tax returns based on the frivolous section 861 argument. Mr. Rose was sentenced in federal district court to 15 months imprisonment, and must pay a fine of $10,000, as well as all taxes, interest and penalties that he owes to the IRS. See http://www.usdoj.gov/opa/pr/2005/August/05_tax_418.htm; see also 2005 TNT 157-22 (Aug. 12, 2005); 2005 TNT 225-17 (Nov. 22, 2005).

The IRS issued Revenue Ruling 2004-28, 2004-1 C.B. 624, which discusses section 911, and Revenue Ruling 2004-30, 2004-1 C.B. 622, which discusses section 861, warning taxpayers of the consequences of making these frivolous arguments.

Relevant Case Law:

Great-West Life Assur. Co. v. United States, 678 F.2d 180, 183 (Ct. Cl. 1982) – the court stated that "[t]he determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. § 1 and I.R.C. § 11, respectively, on their worldwide income."

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the taxpayer's argument that income received from sources within the United States is not taxable income, stating that "[t]he 861 argument is contrary to established law and, for that reason, frivolous." The court imposed sanctions against the taxpayer in the amount of $15,000, as well as sanctions against the taxpayer's attorney in the amount of $10,500, for making such groundless arguments.

Williams v. Commissioner, 114 T.C. 136, 138 (2000) – the court rejected the taxpayer's argument that his income was not from any of the sources listed in Treas. Reg. § 1.861-8(a), characterizing it as "reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts."

Corcoran v. Commissioner, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002) – the court rejected the taxpayers' argument that his income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United

States." The court further required the taxpayers to pay a $2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

Aiello v. Commissioner, T.C. Memo. 1995-40, 69 T.C.M. (CCH) 1765 (1995) – the court rejected the taxpayer's argument that the only sources of income for purposes of section 61 are listed in section 861.

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000) – the court labeled as "frivolous" the position that only foreign income is taxable.

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202 (1993) – the court rejected the taxpayer's argument that his income was exempt from tax by operation of sections 861 and 911, noting that he had no foreign income and that section 861 provides that "compensation for labor or personal services performed in the United States . . . are items of gross income."

3. Contention: Federal Reserve Notes are not income.

Some assert that Federal Reserve Notes currently used in the United States are not valid currency and cannot be taxed, because Federal Reserve Notes are not gold or silver and may not be exchanged for gold or silver. This argument misinterprets Article I, Section 10 of the United States Constitution.

The Law: Congress is empowered "[t]o coin Money, regulate the value thereof, and of foreign coin, and fix the Standard of weights and measures." U.S. Const. Art. I, § 8, cl. 5. Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress' power to declare the form of legal tender. See 31 U.S.C. § 5103; 12 U.S.C. § 411. In United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978), the court affirmed a conviction for willfully failing to file a return, rejecting the argument that Federal Reserve Notes are not subject to taxation. "Congress has declared federal reserve notes legal tender . . . and federal reserve notes are taxable dollars." Id. at 1112. The courts have rejected this argument on numerous occasions.

Relevant Case Law:

Sanders v. Freeman, 221 F.3d 846, 855 (6th Cir. 2000) – in regard to defendant's argument "that imposing sales tax on the sale of legal-tender silver and gold coins unconstitutionally interferes with Congress's exclusive power to coin money is simply untenable," the court recognized that "most, if not all, of the courts that have considered this issue have held that imposing sales tax on the purchase of gold and silver coins and bullion for cash does not infringe on Congress's constitutional power to

coin and regulate currency." See also United States v. Davenport, 824 F.2d 1511, 1521 (7th Cir. 1987).

United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984) – the court upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely "debts."

United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980) – the court affirmed the conviction for willfully failing to file a return and rejected the taxpayer's argument that "the Federal Reserve Notes in which he was paid were not lawful money within the meaning of Art. 1, § 8, United States Constitution."

United States v. Daly, 481 F.2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973) – the court rejected as "clearly frivolous" the assertion "that the only 'Legal Tender Dollars' are those which contain a mixture of gold and silver and that only those dollars may be constitutionally taxed" and affirmed Daly's conviction for willfully failing to file a return.

Jones v. Commissioner, 688 F.2d 17 (6th Cir. 1982) – the court found the taxpayer's claim that his wages were paid in "depreciated bank notes" as clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

C. The Meaning of Certain Terms Used in the Internal Revenue Code

1. Contention: Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws.

Some individuals argue that they have rejected citizenship in the United States in favor of state citizenship; therefore, they are relieved of their federal income tax obligations. A variation of this argument is that a person is a free born citizen of a particular state and thus was never a citizen of the United States. The underlying theme of these arguments is the same: the person is not a United States citizen and is not subject to federal tax laws because only United States citizens are subject to these laws.

The Law: The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that "[a]ll 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 Fourteenth Amendment therefore establishes simultaneous state and federal citizenship. Claims that individuals are not citizens of the United States but are solely citizens of a sovereign state and not subject to federal taxation have been uniformly rejected by the courts. The IRS issued Revenue Ruling 2007-22, 2007-14 I.R.B. 866, warning taxpayers of the consequences of making this frivolous argument.

In April 2005, a federal district court in Georgia permanently barred Jonathan D. Luman blocking him from selling his "Tax Buster" program that was based on the false theory that customers can avoid paying tax by renouncing their Social Security numbers and becoming sovereign citizens. See http://www.usdoj.gov/opa/pr/2005/April/05_tax_190.htm; see also 2005 TNT 93-17 (Apr. 7, 2005).

In September 2006, a federal district court in California permanently barred James L. Tolbert from preparing income tax returns for others, because he promoted a fraudulent tax scheme based on the frivolous theory, among others, that state residents are not liable for federal income tax since they are citizens of the state and not of the United States. See http://www.usdoj.gov/opa/pr/2006/September/06_tax_602.html; see also 2006 TNT 177-31 (Sept. 8, 2006).

In January 2006, Lynn N. Ealy was sentenced in federal district court to 27 months imprisonment for his conviction on three counts of federal income tax evasion and ordered to pay restitution of $84,174 to the IRS. The evidence against Mr. Ealy demonstrated various affirmative acts of evasion, including the fact that he claimed he was not a citizen of the United States and the tax laws were unconstitutional. See 2006 TNT 18-48 (Jan. 12, 2006).

Relevant Case Law:

United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) – the court rejected "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. Sileven, 985 F.2d 962 (8th Cir. 1993) – the court rejected the argument that the district court lacked jurisdiction because the taxpayer was not a federal citizen as "plainly frivolous."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the court rejected the Gerads' contention that they were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protester arguments."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991), cert. denied, 502 U.S. 1060, reh'g denied, 503 U.S. 953 (1992) – the court affirmed a tax evasion conviction and rejected Sloan's argument that the federal tax laws did not apply to him because he was a "freeborn, natural individual, a citizen of the State of Indiana, and a 'master' – not 'servant' – of his government."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court found Ward's contention that he was not

an "individual" located within the jurisdiction of the United States to be "utterly without merit" and affirmed his conviction for tax evasion.

O'Driscoll v. Internal Revenue Service, 1991 U.S. Dist. LEXIS 9829, at *5-6 (E.D. Pa. 1991) – the court stated, "despite [taxpayer's] linguistic gymnastics, he is a citizen of both the United States and Pennsylvania, and liable for federal taxes."

Bland-Barclay v. Commissioner, T.C. Memo. 2002-20, 83 T.C.M. (CCH) 1119, 1121 (2002) – the court rejected taxpayers' claim that they were exempt from the federal income tax laws due to their status as "citizens of the Maryland Republic," characterized such arguments as "baseless and wholly without merit," and required taxpayers to pay a $1,500 penalty for making frivolous arguments.

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202-03 (1993) – the court rejected Solomon's argument that as an Illinois resident his income was from outside the United States, stating "[he] attempts to argue an absurd proposition, essentially that the State of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. [His] arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions."

In September 2006, a federal district court in California barred James L. Tolbert from preparing federal tax returns. Mr. Tolbert promoted a tax scheme by representing, among other things, that residents of California or other states are not liable for federal income tax because they are "citizens of California (or other state) and not the United States," or that "American citizens working in the United States need not file federal income returns because 'compensation for labor' is totally different in meaning and in law from 'income.' See http://www.usdoj.gov/tax/txdv05416.htm

2. Contention: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves.

Some argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws.

The Law: The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves. In United

States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19 (1916), and noted the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." This frivolous contention has been uniformly rejected by the courts. Furthermore, the IRS issued Revenue Ruling 2006-18, 2006-15 I.R.B. 743, warning taxpayers of the consequences of making this frivolous argument.

In April 2006, a federal district court in California permanently barred Michael Muhammad (a.k.a., Michael Eugene Wall and Michael Muta Ali Muhammad) from preparing federal income tax returns for others, because he promoted a fraudulent tax scheme by preparing returns reporting no income based on the theory that only income earned in the District of Columbia and other federal territories need be reported. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_224.html; see also 2006 TNT 75-34 (Apr. 18, 2006).

In May 2005, a federal district judge sentenced Wayne C. Bentson to a four year prison term to be followed by three years of probation, as well as requiring Mr. Bentson to pay restitution of over $1.1 million for falsely advising clients, among other things, that the internal revenue laws only applied to individuals residing in the Virgin Islands, Guam and Puerto Rico. See http://www.usdoj.gov/opa/pr/2005/May/05_tax_275.htm; see also 2005 TNT 97-49 (May 18, 2005).

Relevant Case Law:

United States v. Cooper, 170 F.3d 691, 691 (7th Cir. 1999) – the court sanctioned defendant for filing of frivolous appeal wherein he argued, in pertinent part, that only residents of Washington, D.C. and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States.

United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994) – the court rejected "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws.

In re Becraft, 885 F.2d 547, 549-50 (9th Cir. 1989) – the court, observing Becraft's claim that federal laws apply only to United States territories and the District of Columbia "has no semblance of merit," and noting that this attorney had previously litigated cases in the federal appeals courts that had "no reasonable possibility of success," imposed monetary damages and expressed the hope "that this assessment will deter Becraft from asking this and other federal courts to expend more time and resources on patently frivolous legal positions."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court rejected as a "twisted conclusion" the contention "that the United States has jurisdiction over only Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States," and affirmed a tax evasion conviction.

Barcroft v. Commissioner, T.C. Memo. 1997-5, 73 T.C.M. (CCH) 1666, 1667, appeal dismissed, 134 F.3d 369 (5th Cir. 1997) – Barcroft claimed that he was not "a 'U.S. citizen,' subject to federal jurisdiction, such as 'officers, employees, and elected officials of the United States,'" and did not "reside within a federal territory such as Washington D.C., or a federal enclave within a State, or a U.S. possession." The court noted that Barcroft's statements "contain protester-type contentions that have been rejected by the courts as groundless," the court sustained penalties for failure to file returns and failure to pay estimated income taxes.

3. Contention: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws.

Some maintain that they are not a "person" as defined by the Internal Revenue Code, and thus not subject to the federal income tax laws. This argument is based on a tortured misreading of the Code.

The Law: The Internal Revenue Code clearly defines "person" and sets forth which persons are subject to federal taxes. Section 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax and section 7701(a)(1) defines "person" to include an individual, trust, estate, partnership, or corporation. Arguments that an individual is not a "person" within the meaning of the Internal Revenue Code have been uniformly rejected. A similar argument with respect to the term "individual" has also been rejected. The IRS issued Revenue Ruling 2007-22, 2007-14 I.R.B. 866, warning taxpayers of the consequences of making this frivolous argument.

Relevant Case Law:

United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), cert. denied, 480 U.S. 907 (1987) – the court affirmed Karlin's conviction for failure to file income tax returns and rejected his contention that he was "not a 'person' within meaning of 26 U.S.C. § 7203" as "frivolous and requir[ing] no discussion."

McCoy v. Internal Revenue Service, 88 A.F.T.R.2d (RIA) 5909, 2001 U.S. Dist. LEXIS 15113, at *21, 22 (D. Col. Aug. 7, 2001) – the court dismissed the taxpayer's complaint, which asserted that McCoy was a nonresident alien and not subject to tax, describing the taxpayer's argument as "specious and legally frivolous."

United States v. Rhodes, 921 F. Supp. 261, 264 (M.D. Pa. 1996) – the court stated that "[a]n individual is a person under the Internal Revenue Code."

Biermann v. Commissioner, 769 F.2d 707, 708 (11th Cir.), reh'g denied, 775 F.2d 304 (11th Cir. 1985) – the court said the claim that Biermann was not "a person liable for taxes" was "patently frivolous" and, given the Tax Court's warning to Biermann that his positions would never be sustained in any court, awarded the government double costs, plus attorney's fees.

Smith v. Commissioner, T.C. Memo. 2000-290, 80 T.C.M. (CCH) 377, 378-89 (2000) – the court described the argument that Smith "is not a 'person liable' for tax" as frivolous, sustained failure to file penalties, and imposed a penalty for maintaining "frivolous and groundless positions."

United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986) – the court affirmed a failure to file conviction, rejecting the taxpayer's contention that she was not subject to federal tax laws because she was "an absolute, freeborn, and natural individual" and went on to note that "this argument has been consistently and thoroughly rejected by every branch of the government for decades."

4. Contention: The only "employees" subject to federal income tax are employees of the federal government.

Some argue that the federal government can tax only employees of the federal government; therefore, employees in the private sector are immune from federal income tax liability. This argument is based on a misinterpretation of section 3401, which imposes responsibilities to withhold tax from "wages." That section establishes the general rule that "wages" include all remuneration for services performed by an employee for his employer. Section 3401(c) goes on to state that the term "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof . . . ."

The Law: Section 3401(c) defines "employee" and states that the term "includes an officer, employee or elected official of the United States . . . ." This language does not address how other employees' wages are subject to withholding or taxation. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Thus, the word "includes" as used in the definition of "employee" is a term of enlargement, not of limitation. It clearly makes federal employees and officials a part of the definition of "employee," which generally includes private citizens. The Internal Revenue Service issued Revenue Ruling 2006-18, 2006-15 I.R.B. 743, warning taxpayers of the consequences of making this frivolous argument.

In June 2006, a federal district court in California permanently barred Christopher M. Hansen (using the business names of the "Family Guardian" and the "Sovereignty Education and Defense Ministry) from promoting a fraudulent tax scheme based on the frivolous theory, among others, that only federal workers are subject to the Internal Revenue Code. See http://www.usdoj.gov/opa/pr/2006/June/06_enrd_345.html; see also 2006 TNT 107-98 (Jun. 2, 2006).

In March 2007, a federal court in Michigan issued a temporary restraining order barring Donald A. Gray from preparing federal income tax returns for others. The court found that the Portage, Michigan, man had been preparing income tax returns for customers based on the frivolous theory that wages are not income for federal tax purposes unless the wage earner works for the government. See http://www.usdoj.gov/tax/txdv07024.htm.

In May 2007, a federal court in Michigan permanently barred Peter and Doreen Hendrickson from filing tax returns and forms on which they falsely report their income as zero. The injunction order also requires the couple to repay more than $20,000 in federal income, Social Security, and Medicare taxes that they had obtained by filing false tax returns with the IRS. The order notes that the couple based their improper conduct on a book Peter Hendrickson wrote called "Cracking the Code." The book states that federal tax withholding and income taxes on wages are applicable only for a limited class of people, primarily government employees. See http://www.usdoj.gov/tax/txdv07320.htm.

Relevant Case Law:

United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) – calling the instructions Latham wanted given to the jury "inane," the court said, "[the] instruction which indicated that under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute. It is obvious within the context of [the law] the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."

Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986) – the court rejected Sullivan's attempt to recover a civil penalty for filing a frivolous return, stating "to the extent [he] argues that he received no 'wages'. . . because he was not an 'employee' within the meaning of 26 U.S.C. § 3401(c), that contention is meritless. . . . The statute does not purport to limit withholding to the persons listed therein." The court imposed sanctions on Sullivan for bringing a frivolous appeal.

Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985) – the court rejected the taxpayer's argument "that he is not an 'employee' under

I.R.C. § 3401(c) because he is not a federal officer, employee, elected official, or corporate officer," stating, "[he] mistakenly assumes that this definition of 'employee' excludes all other wage earners."

Pabon v. Commissioner, T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813, 816 (1994) – the court characterized Pabon's position – including that she was not subject to tax because she was not an employee of the federal or state governments – as "nothing but tax protester rhetoric and legalistic gibberish." The court imposed a penalty of $2,500 on Pabon for bringing a frivolous case, stating that she "regards this case as a vehicle to protest the tax laws of this country and espouse her own misguided views."

D. Constitutional Amendment Claims

1. Contention: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.

Some argue that taxpayers may refuse to pay federal income taxes based on their religious or moral beliefs, or objection to the use of taxes to fund certain government programs. These persons mistakenly invoke the First Amendment in support of this frivolous position.

The Law: The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment, however, does not provide a right to refuse to pay income taxes on religious or moral grounds, or because taxes are used to fund government programs opposed by the taxpayer. Nor does the First Amendment protect commercial speech or speech that aids or incites taxpayers to unlawfully refuse to pay federal income taxes, including speech that promotes abusive tax avoidance schemes.

Relevant Case Law:

United States v. Lee, 455 U.S. 252, 260 (1982) – the U.S. Supreme Court held that the broad public interest in maintaining a sound tax system is of such importance that religious beliefs in conflict with the payment of taxes provide no basis for refusing to pay, and stated that "[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief."

United States v. Indianapolis Baptist Temple, 224 F.3d 627, 629 – 631 (7th Cir. 2000), cert denied, 531 U.S. 1112 (2001) – the court rejected defendant's Free Exercise challenge to the federal employment tax as those laws were not restricted to the defendant or other religion-related

employers generally, and there was no indication that they were enacted for the purpose of burdening religious practices.

United States v. Ramsey, 992 F.2d 831, 833 (8th Cir. 1993) – the court rejected Ramsey's argument that filing federal income tax returns and paying federal income taxes violates his pacifist religious beliefs and stated that Ramsey "has no First Amendment right to avoid federal income taxes on religious grounds."

Wall v. United States, 756 F.2d 52 (8th Cir. 1985) – the court upheld the imposition of a $500 frivolous return penalty against Wall for taking a "war tax deduction" on his federal income tax return based on his religious convictions and stated the "necessities of revenue collection through a sound tax system raise governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds."

United States v. Peister, 631 F2d. 658 (10th Cir. 1980) – the court rejected Peister's argument that he was exempt from income tax based on his vow of poverty after he became the minister of a church he formed; his First Amendment right to freedom of religion was not violated.

Jenkins v. Commissioner, 483 F.3d 90, 92 (2d Cir. 2007) - the court upheld the decision of the Tax Court that the collection of tax revenues for expenditures that offended the religious beliefs of individual taxpayers did not violate the Free Exercise Clause of the First Clause, the Religious Freedom Restoration Act of 1993, or the Ninth Amendment. In addition, the court upheld the imposition of a $5,000 frivolous return penalty against Jenkins.

2. Contention: Federal income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment.

Some assert that the collection of federal income taxes constitutes a "taking" of property without due process of law, in violation of the Fifth Amendment. Thus, any attempt by the IRS to collect federal income taxes owed by a taxpayer is unconstitutional.

The Law: The Fifth Amendment to the United States Constitution provides that a person shall not be "deprived of life, liberty, or property, without due process of law . . . ." The U.S. Supreme Court stated in Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916), that "it is . . . well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power, and taking the same power away on the other by limitations of the due process clause." Further, the Supreme Court has upheld the constitutionality of the summary administrative procedures contained in

the Internal Revenue Code against due process challenges, on the basis that a post-collection remedy (e.g., a tax refund suit) exists and is sufficient to satisfy the requirements of constitutional due process. Phillips v. Commissioner, 283 U.S. 589, 595-97 (1931).

The Internal Revenue Code provides methods to ensure due process to taxpayers: (1) the "refund method," set forth in section 7422(e) and 28 U.S.C. §§ 1341 and 1346(a), where a taxpayer must pay the full amount of the tax and then sue in a federal district court or in the United States Court of Federal Claims for a refund; and (2) the "deficiency method," set forth in section 6213(a), where a taxpayer may, without paying the contested tax, petition the United States Tax Court to redetermine a tax deficiency asserted by the IRS. Courts have found that both methods provide constitutional due process.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

For a discussion of frivolous tax arguments made in collection due process cases arising under sections 6320 and 6330, see Section II of this outline.

Relevant Case Law:

Flora v. United States, 362 U.S. 145, 175 (1960) – the United States Supreme Court held that a taxpayer must pay the full tax assessment before being able to file a refund suit in district court, noting that a person has the right to appeal an assessment to the Tax Court "without paying a cent."

Schiff v. United States, 919 F.2d 830 (2d Cir. 1990) – the court rejected a due process claim where the taxpayer chose not to avail himself of the opportunity to appeal a deficiency notice to the Tax Court.

3. Contention: Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

Some argue that taxpayers may refuse to file federal income tax returns, or may submit tax returns on which they refuse to provide any financial information, because they believe that their Fifth Amendment privilege against self-incrimination will be violated.

The Law: There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. In United States v. Sullivan, 274 U.S. 259, 264 (1927), the U.S. Supreme Court stated that the taxpayer "could not draw a conjurer's circle around the whole matter by his own declaration that to

write any word upon the government blank would bring him into danger of the law." The failure to comply with the filing and reporting requirements of the federal tax laws will not be excused based upon blanket assertions of the constitutional privilege against compelled self-incrimination under the Fifth Amendment.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

United States v. Schiff, 612 F.2d 73, 83 (2d Cir. 1979) – the court said that "the Fifth Amendment privilege does not immunize all witnesses from testifying. Only those who assert as to each particular question that the answer to that question would tend to incriminate them are protected . . . . [T]he questions in the income tax return are neutral on their face . . . [h]ence privilege may not be claimed against all disclosure on an income tax return."

United States v. Brown, 600 F.2d 248, 252 (10th Cir. 1979) – noting that the Supreme Court had established "that the self-incrimination privilege can be employed to protect the taxpayer from revealing the information as to an illegal source of income, but does not protect him from disclosing the amount of his income," the court said Brown made "an illegal effort to stretch the Fifth Amendment to include a taxpayer who wishes to avoid filing a return."

United States v. Neff, 615 F.2d 1235, 1241 (9th Cir.), cert. denied, 447 U.S. 925 (1980) – the court affirmed a failure to file conviction, noting that the taxpayer "did not show that his response to the tax form questions would have been self-incriminating. He cannot, therefore, prevail on his Fifth Amendment claim."

United States v. Daly, 481 F.2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973) – the court affirmed a failure to file conviction, rejecting the taxpayer's Fifth Amendment claim because of his "error in . . . his blanket refusal to answer any questions on the returns relating to his income or expenses."

Sochia v. Commissioner, 23 F.3d 941 (5th Cir. 1994), cert. denied, 513 U.S. 1153 (1995) – the court affirmed tax assessments and penalties for failure to file returns, failure to pay taxes, and filing a frivolous return. The court also imposed sanctions for pursuing a frivolous case. The taxpayers had failed to provide any information on their tax return about income and expenses, instead claiming a Fifth Amendment privilege on each line calling for financial information.

4. Contention: Compelled compliance with the federal income tax laws is a form of servitude in violation of the Thirteenth Amendment.

This argument asserts that the compelled compliance with federal tax laws is a form of servitude in violation of the Thirteenth Amendment.

The Law: The Thirteenth Amendment to the United States Constitution prohibits slavery within the United States, as well as the imposition of involuntary servitude, except as punishment for a crime of which a person shall have been duly convicted. In Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954), the Court of Appeals stated that "if the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Courts have consistently found arguments that taxation constitutes a form of involuntary servitude to be frivolous.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954) – the court described the taxpayer's Thirteenth and Sixteenth Amendment claims as "clearly unsubstantial and without merit," as well as "far-fetched and frivolous."

United States v. Drefke, 707 F.2d 978, 983 (8th Cir. 1983) – the court affirmed Drefke's failure to file conviction, rejecting his claim that the Thirteenth Amendment prohibited his imprisonment because that amendment "is inapplicable where involuntary servitude is imposed as punishment for a crime."

Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979) – the court rejected the taxpayer's claim that the Internal Revenue Code results in involuntary servitude in violation of the Thirteenth Amendment.

Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972) – the court rejected as without merit the argument that the requirements to keep records and to prepare and file tax returns violated the Kaseys' Fifth Amendment privilege against self-incrimination and amount to involuntary servitude prohibited by the Thirteenth Amendment.

Wilbert v. Internal Revenue Service (In re Wilbert), 262 B.R. 571, 578, 88 A.F.T.R.2d 6650 (Bankr. N.D. Ga. 2001) – the court rejected the taxpayer's argument that taxation is a form of involuntary servitude prohibited by the Thirteenth Amendment, stating that "[i]t is well-settled American jurisprudence that constitutional challenges to the IRS' authority

to collect individual income taxes have no legal merit and are 'patently frivolous.'"

5. **Contention: The Sixteenth Amendment to the United States Constitution was not properly ratified, thus the federal income tax laws are unconstitutional.**

This argument is based on the premise that all federal income tax laws are unconstitutional because the Sixteenth Amendment was not officially ratified, or because the State of Ohio was not properly a state at the time of ratification. This argument has survived over time because proponents mistakenly believe that the courts have refused to address this issue.

The Law: The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. The Sixteenth Amendment was ratified by forty states, including Ohio (which became a state in 1803; see Bowman v. United States, 920 F. Supp. 623 n.1 (E.D. Pa. 1995) (discussing the 1953 joint Congressional resolution that confirmed Ohio's status as a state retroactive to 1803), and issued by proclamation in 1913. Shortly thereafter, two other states also ratified the Amendment. Under Article V of the Constitution, only three-fourths of the states are needed to ratify an Amendment. There were enough states ratifying the Sixteenth Amendment even without Ohio to complete the number needed for ratification. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since that time, the courts have consistently upheld the constitutionality of the federal income tax.

Similarly, Robert L. Schulz, along with his organizations, We the People Congress and We the People Foundation, marketed and distributed to customers a fraudulent "Tax Termination Package" supposedly providing a way for taxpayers to legally stop withholding and paying taxes. The scheme was based on a number of false premises, including the claim that the Sixteenth Amendment was not properly ratified. In August 2007, a federal court permanently enjoined Mr. Schulz and his organizations from promoting the scheme. See http://www.usdoj.gov/tax/txdv07595.htm.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

Miller v. United States, 868 F.2d 236, 241 (7th Cir. 1989) (per curiam) – the court stated, "We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, Brushaber v. Union Pacific Railroad Company . . . and those specifically rejecting the argument advanced in The Law That Never Was, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure." The court imposed sanctions on them for having advanced a "patently frivolous" position.

United States v. Stahl, 792 F.2d 1438, 1441 (9th Cir. 1986), cert. denied, 479 U.S. 1036 (1987) – stating that "the Secretary of State's certification under authority of Congress that the sixteenth amendment has been ratified by the requisite number of states and has become part of the Constitution is conclusive upon the courts," the court upheld Stahl's conviction for failure to file returns and for making a false statement.

United States v. Foster, 789 F.2d 457 (7th Cir.), cert. denied, 479 U.S. 883 (1986) – the court affirmed Foster's conviction for tax evasion, failing to file a return, and filing a false W-4 statement, rejecting his claim that the Sixteenth Amendment was never properly ratified.

Socia v. Commissioner, 23 F.3d 941 (5th Cir. 1994) – the court held that defendant's appeals which challenged Sixteenth Amendment income tax legislation were frivolous and warranted sanctions.

Knoblauch v. Commissioner, 749 F.2d 200, 201 (5th Cir. 1984), cert. denied, 474 U.S. 830 (1986) – the court rejected the contention that the Sixteenth Amendment was not constitutionally adopted as "totally without merit" and imposed monetary sanctions against Knoblauch based on the frivolousness of his appeal. "Every court that has considered this argument has rejected it," the court observed.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006). – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that have been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

6. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws.

The Law: The constitutionality of the Sixteenth Amendment has invariably been upheld when challenged. And numerous courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws as applied are valid. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited to Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19 (1916), and noted that the U.S. Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation."

Relevant Case Law:

In re Becraft, 885 F.2d 547 (9th Cir. 1989) – the court affirmed a failure to file conviction, rejecting the taxpayer's frivolous position that the Sixteenth Amendment does not authorize a direct non-apportioned income tax.

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) – the court found defendant's argument that the Sixteenth Amendment does not authorize a direct, non-apportioned tax on United States citizens similarly to be "devoid of any arguable basis in law."

Lovell v. United States, 755 F.2d 517, 518 (7th Cir. 1984) – the court rejected the argument that the Constitution prohibits imposition of a direct tax without apportionment, and upheld the district court's frivolous return penalty assessment and the award of attorneys' fees to the government "because [the taxpayers'] legal position was patently frivolous." The appeals court imposed additional sanctions for pursuing "frivolous arguments in bad faith."

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006) – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer

for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

E. Fictional Legal Bases

1. Contention: The Internal Revenue Service is not an agency of the United States.

Some argue that the IRS is not an agency of the United States but rather a private corporation, because it was not created by positive law (i.e., an act of Congress) and that, therefore, the IRS does not have the authority to enforce the Internal Revenue Code.

The Law: There is a host of constitutional and statutory authority establishing that the IRS is an agency of the United States. The U.S. Supreme Court stated in Donaldson v. United States, 400 U.S. 517, 534 (1971), "[w]e bear in mind that the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under § 7801(a) of the 1954 Code for the administration and enforcement of the internal revenue laws."

Pursuant to section 7801, the Secretary of the Treasury has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce such laws. Based upon this legislative grant, the IRS was created. Thus, the IRS is a body established by "positive law" because it was created through a congressionally mandated power. Moreover, section 7803(a) explicitly provides that there shall be a Commissioner of Internal Revenue who shall administer and supervise the execution and application of the internal revenue laws.

In April 2006, a federal district court in Louisiana permanently barred Eddie Ferrand, Glenda F. Elliott, and William N. Kennedy, from preparing tax returns, because they had understated income on their customers' federal income tax returns based on the frivolous premise, among others, that the IRS is an illegal organization. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_226.html; see also 2006 TNT 75-36.

Relevant Case Law:

Salman v. Dept. of Treasury, 899 F. Supp. 471 (D. Nev. 1995) – the court described Salman's contention that the IRS is not a government agency of the United States as wholly frivolous and dismissed his claim with prejudice.

Young v. Internal Revenue Service, 596 F. Supp. 141 (N.D. Ind. 1984) – the court granted summary judgment in favor of the government, rejecting

Young's claim that the IRS is a private corporation, rather than a government agency.

2. **Contention: Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.**

Some argue that taxpayers are not required to file tax returns because of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq. ("PRA"). The PRA was enacted to limit federal agencies' information requests that burden the public. The "public protection" provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget [OMB] Director. 44 U.S.C. § 3512. Advocates of this contention claim that they cannot be penalized for failing to file Form 1040, because the instructions and regulations associated with the Form 1040 do not display any OMB control number.

The Law: The courts have uniformly rejected this argument on different grounds. Some courts have simply noted that the PRA applies to the forms themselves, not to the instruction booklets, and because the Form 1040 does have a control number, there is no PRA violation.

Other courts have held that Congress created the duty to file returns in section 6012(a) and "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress." United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992). Also, the IRS issued Revenue Ruling 2006-21, 2006-15 I.R.B. 745, warning taxpayers of the consequences of making this frivolous argument.

Relevant Case Law:

United States v. Patridge, __F.3d __, 2007 WL 3355739 (7th Cir. 2007) – in the course of upholding the taxpayer's conviction for tax evasion, the court addressed and rejected the taxpayer's contention that the Paperwork Reduction Act foreclosed his conviction.

United States v. Wunder, 919 F.2d 34 (6th Cir. 1990) – the court rejected Wunder's claim of a PRA violation, affirming his conviction for failing to file a return.

Salberg v. United States, 969 F.2d 379 (7th Cir. 1992) – the court affirmed Salberg's conviction for tax evasion and failing to file a return, rejecting his claims under the PRA.

United States v. Holden, 963 F.2d 1114 (8th Cir.), cert. denied, 506 U.S. 958 (1992) – the court affirmed Holden's conviction for failing to file a

return and rejected his contention that he should have been acquitted because tax instruction booklets fail to comply with the PRA.

United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991) – the court affirmed Hicks' conviction for failing to file a return, finding that the requirement to provide information is required by law, not by the IRS. "This is a legislative command, not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch."

Lonsdale v. United States, 919 F.2d 1440, 1445 (10th Cir. 1990) – the court held that the Paperwork Reduction Act does not apply to summonses and collection notices.

Saxon v. United States, T.C. Memo. 2006-52, 91 T.C.M. (CCH) 914 (2006) - the court, in imposing $5,000 sanctions against Saxon, found claims that violation of the Paperwork Reduction Act excuses a taxpayer from filing returns or paying taxes have been universally rejected as meritless.

3. Contention: African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment.

Proponents of this contention assert that African Americans can claim a so-called "Black Tax Credit" on their federal income tax returns as reparations for slavery and other oppressive treatment suffered by African Americans. A similar frivolous argument has been made that Native Americans are entitled to a credit on their federal income tax returns as a form of reparations for past oppressive treatment.

The Law: There is no provision in the Internal Revenue Code which allows taxpayers to claim a "Black Tax Credit" or a credit for Native American reparations. It is a well settled principle of law that deductions and credits are a matter of legislative grace. See, e.g., Wilson v. Commissioner, T.C. Memo. 2001-139, 81 T.C.M. (CCH) 1745 (2001). Unless specifically provided for in the Internal Revenue Code, no deduction or credit may be allowed.

The IRS indicated in News Release IR-2002-08, 2002 I.R.B. LEXIS 30, that it will crack down on promoters of "slavery reparation tax credit" and "Native American reparations" scams. See 2002 TNT 17-15 (Jan. 24, 2002). Also, according to the News Release, the IRS will implement a new policy under which these reparation claims will be treated as a frivolous tax return which could result in a potential $500 penalty. Id. The IRS issued Revenue Ruling 2004-33, 2004-1 C.B. 628, warning taxpayers of the consequences of making this frivolous argument. Also, with respect to a somewhat similar argument, the IRS issued Revenue Ruling 2006-20, 2006-15 I.R.B. 746, warning taxpayers from claiming an exemption for Native Americans from federal income tax liability based upon an unspecified "Native American Treaty."

Persons who claim refunds based on the slavery reparation tax credit or assist others in doing so are subject to prosecution for violation of federal tax laws. In July 2003, Robert L. Foster and Crystal D. Foster, father and daughter, were convicted of conspiracy to defraud the United States with respect to such claims and of filing false, fictitious and fraudulent claims. On October 23, 2003, Robert Foster was sentenced to 13 years in prison and Crystal Foster was sentenced to 3 years and 1 month in prison. See 2003 TNT 206-31 (Oct. 23, 2003). In September 2005, the Third Circuit affirmed Robert Foster's conviction, but remanded the case for resentencing. See 2005 TNT 187-18 (Sept. 23, 2005).

Furthermore, the United States has a cause of action for injunctive relief against a party suspected of violating the tax laws. Sections 7407 and 7408 provide for injunctive relief against income tax preparers and promoters of abusive tax shelters, respectively, in these types of cases. For example, on March 31, 2003, a federal district court permanently barred tax return preparer, Andrew W. Wiley, from preparing federal income tax returns claiming refunds based on a non-existent tax credit for slavery reparations finding that Wiley engaged in "deceptive conduct which has interfered substantially with the proper administration" of the tax laws. United States v. Wiley, No. 3:02-cv-209WS (S.D. Miss. 2002); see 2003 TNT 62-18 (March 31, 2003).

In August 2007, a federal court in Georgia permanently barred Derrick Sanders from promoting a tax fraud scheme involving false claims. Sanders, in promoting the scheme, repeatedly made false statements that the Yamassee group is a Native American tribe whose members are exempt from federal income tax. Sanders also prepared forms for customers to use improperly to instruct their employers to stop withholding taxes from wages. See http://www.usdoj.gov/tax/txdv05494.htm and http://www.usdoj.gov/tax/txdv06095.htm

Relevant Case Law:

Taylor v. United States, 57 Fed. Cl. 264, 266 (2003) – the court upheld Service's denial of Taylor's refund claim, which was based on "being reduced to a second class citizen, but billed first class citizenship taxes for over 60 years," holding that the Internal Revenue Code does not contain a provision allowing slavery reparation claims.

Wilkins v. Commissioner, 120 T.C. 109 (2003) – the court found that the Internal Revenue Code does not provide a tax deduction, credit, or other allowance for slavery reparations.

George v. Commissioner, T.C. Memo. 2006-121 – the court rejected George's frivolous argument that he is an "Indian not paying taxes" finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.

Gunton v. Commissioner, T.C. Memo. 2006-122 – the court rejected Gunton's frivolous arguments finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.

United States v. Bridges, 86 A.F.T.R.2d (RIA) 5280 (4th Cir. 2000) – the court upheld Bridges' conviction of aiding and assisting the preparation of false tax returns, on which he claimed a non-existent "Black Tax Credit."

United States v. Haugabook, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. 2002) – the court entered a permanent injunction against Haugabook prohibiting him from preparing returns or other documents to be filed with the IRS claiming a tax credit or refund for reparations for slavery or other fabricated tax credits or refunds.

United States v. Mims, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. 2002) – the court entered a permanent injunction against the defendants prohibiting them from preparing returns or other documents with the IRS claiming a credit or refund for reparations for slavery or any other fabricated tax credit or refund.

United States v. Foster, 2002-1 U.S.T.C. (CCH) ¶ 50,263 (E.D. Va. 2002) – the court held that the United States clearly established its right to recover an erroneously paid refund in the amount of $500,000, plus interest, where the claim for refund was based on the slavery reparation tax credit.

United States v. Foster, 2002-2 U.S.T.C. (CCH) ¶ 50,785 (E.D. Va. 2002) – the court held that no provision of the Internal Revenue Code allows for a tax credit for slavery reparations and entered an injunction against Foster (an income tax return preparer) prohibiting him from preparing returns or refund claims based on fabricated tax credits.

4. Contention: Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime.

Proponents of this contention encourage individuals to file claims for refund of the Social Security taxes paid during their lifetime, on the basis that the claimants have sought to waive all rights to their Social Security benefits. Additionally, some advise taxpayers to claim a charitable contribution deduction as a result of their "gift" of these benefits or of the Social Security taxes to the United States.

The Law: There is no provision in the Internal Revenue Code, or any other provision of law, which allows for a refund of Social Security taxes paid on the grounds asserted above. In Crouch v. Commissioner, T.C. Memo. 1990-309, 59 T.C.M. (CCH) 938 (1990), the Tax Court sustained an IRS determination that a person may not claim a charitable contribution deduction based upon the waiver of future Social Security benefits.

The IRS issued Revenue Ruling 2005-17, 2005-1 C.B. 823, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

5. Contention: An "untaxing" package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes.

Advocates of this idea believe that an "untaxing" package or trust provides a way of legally and permanently "untaxing" oneself so that a person would no longer be required to file federal income tax returns and pay federal income taxes. Promoters who sell such tax evasion plans and supposedly teach individuals how to remove themselves from the federal tax system rely on many of the above-described frivolous arguments, such as the claim that payment of federal income taxes is voluntary, that there is no requirement for a person to file federal income tax returns, and that there are legal ways not to pay federal income taxes.

The Law: The underlying claims for these "untaxing" packages are frivolous, as specified above. Furthermore, the Internal Revenue Service issued Revenue Ruling 2006-19, 2006-15 I.R.B. 749, warning that taxpayers may not eliminate their federal income tax liability by attributing income to a trust and claiming expense deductions related to that trust.

Promoters of these "untaxing" schemes as well as willful taxpayers have been subjected to criminal penalties for their actions. Taxpayers who have purchased and followed these "untaxing" plans have also been subjected to civil penalties for failure to timely file a federal income tax return and failure to pay federal income taxes.

Section 7408 provides a cause of action for injunctive relief to the United States against a party suspected of violating the tax laws. On November 15, 2001, the United States filed complaints for permanent injunctions pursuant to section 7408 against three individuals (David Bosset, Thurston Bell, and Harold Hearn) for failing to sign tax returns, promoting schemes that they knew were false or fraudulent, and engaging in the preparation of documents that understate tax liability. United States v. Bosset, No. 8:01-cv-2154-T-26TBM (M.D. Fla. 2001); United States v. Bell, No. 1:CV-01-2159 (M.D. Penn. 2001); United States v. Hearn, No. 1:01-CV-3058 (N.D. Ga. 2001).

On January 29, 2002, a consent order was entered in United States v. Hearn in favor of the United States. The order permanently enjoined Mr. Hearn and his representatives from, among other things, promoting or selling tax shelter plans, including but not limited to the section 861 argument. (See Section I.B.2 of this outline concerning a section 861 argument.) In the order, Mr. Hearn agreed that he relied upon the frivolous section 861 argument in making false or fraudulent statements

on federal income tax returns regarding the excludability of wages and other items from income. A permanent injunction order was entered in United States v. Bosset on February 27, 2003, barring Mr. Bosset from promoting the frivolous section 861 argument. A permanent injunction order was entered in United States v. Bell on January 29, 2004, enjoining Mr. Bell from promoting frivolous positions for fraudulent tax schemes. The Third Circuit affirmed the permanent injunction against Bell in July 2005. United States v. Bell, 414 F.3d 474 (3d Cir. 2005).

In September 2004, a federal district court granted a preliminary injunction against James Binge and Terrence Bentivegna enjoining them from promoting abuse tax shelters and preparing federal tax returns. The court found that the plan promoted by these two individuals (doing business as Accounting & Financial Services) encouraging others to form various trusts without a legitimate legal basis in order to avoid federal taxes was an abusive tax scheme. United States v. Binge et. al, No. 5:04-CV-01419 (N.D. Ohio Sept. 27, 2004); see http://www.usdoj.gov/tax/txdv04658.htm; see also 2004 TNT 218-12 (Sept. 27, 2004). In March 2005, a federal district court in Florida permanently barred Fred J. Anderson, Deborah A. Martin, and Richard A. Walters from promoting sham trust tax schemes that assisted customers in establishing trusts, foundations, and corporations that the customers used to illegally eliminate or reduce their federal tax liabilities by claiming improper deductions. See http://www.usdoj.gov/opa/pr/2005/March/05_cdr_105.htm; see also 2005 TNT 45-46 (Mar. 8, 2005).

In April 2005, a federal district court in Georgia permanently enjoined Jonathan D. Luman from promoting and selling his "Tax Buster Guide" which falsely instructs customers they can refuse to file tax returns or pay federal taxes based on various frivolous arguments. See http://www.usdoj.gov/opa/pr/2005/April/05_tax_190.htm; see also 2005 TNT 93-17 (Apr. 7, 2005).

In June 2005, a federal district court judge in Los Angeles sentenced five individuals (including the leader of the operation, Lynne Meredith) associated with a tax fraud group known as "We the People" to prison terms ranging from 20 months to 121 months. The convictions were based on evidence that the group conducted seminars falsely instructing attendees, among other things, that they could shield income and assets from federal income taxation by using bogus "pure trusts." See http://www.usdoj.gov/usao/cac/text_only/pr2005/086.html; see also 2005 TNT 109-30 (Jun. 7, 2005).

In November 2005, a federal district court judge in Dallas sentenced Daniel A. Fisher to nearly 20 years imprisonment and ordered him to pay a $1,000,000 fine. The conviction was based, in part, on evidence that Fisher prepared, or aided in preparing, income tax returns that were fraudulent because they involved the creation of sham business entities

and transactions aimed at eliminating taxes owed by the taxpayers. See http://www.usdoj.gov/usao/txn/PressRel05/fisher_daniel_irs_sen_pr.html; 2005 TNT 222-27 (Nov. 16, 2005).

In May 2006, a federal district court judge in Washington sentenced David Carroll Stephenson to 8 years in prison and ordered him to pay more than $8.5 million in restitution to the IRS. The conviction was based on evidence that Stephenson assisted hundreds of taxpayers in forming and operating sham trusts designed to evade paying income taxes. See 2006 TNT 97-27 (May 18, 2006).

Furthermore, persons making frivolous arguments may be denied the ability to practice before the IRS. In July 2004, the Treasury Department denied a request for reinstatement to practice before the IRS made by Joseph R. Banister, now a CPA but formerly an IRS Criminal Investigations agent. Mr. Banister made various frivolous arguments, including the contention that only foreign-source income is taxable and the contention that the Sixteenth Amendment was not ratified, which led to the decision to deny his request. See 2004 TNT 145-3 (July 14, 2004).

Relevant Case Law:

United States v. Andra, 218 F.3d 1106 (9th Cir. 2000) – in affirming the conviction of a promoter of an untaxing scheme for tax evasion and conspiracy, the court found that it was proper to include the tax liabilities of persons Andra recruited into a tax fraud conspiracy when calculating the effect of his actions for sentencing.

United States v. Clark, 139 F.3d 485 (5th Cir.), cert. denied, 525 U.S. 899 (1998) – the court upheld convictions of defendants involved with The Pilot Connection Society for conspiracy to defraud the United States and aiding and abetting the filing of fraudulent Forms W-4.

Robinson v. Commissioner, T.C. Memo. 1995-102, 69 T.C.M. (CCH) 2061, 2062 (1995) – the court quoted language from Hanson v. Commissioner, 696 F.2d 1232, 1234 (9th Cir. 1983) that "[n]o reasonable person would have trusted this scheme to work."

King v. Commissioner, T.C. Memo. 1995-524, 70 T.C.M. (CCH) 1152 (1995) – the court found King, who had followed the Pilot Connection's "untaxing" techniques, liable for penalties for failure to file returns and for failing to make sufficient estimated tax payments.

United States v. Raymond, 228 F.3d 804, 812 (7th Cir. 2000), cert. denied, 533 U.S. 902 (2001) – the court affirmed a permanent injunction against taxpayers who promoted a "De-Taxing America Program," forbidding them from engaging in certain activities that incited others to violate tax laws. The court said, "[W]e conclude that the statements the appellants made in the Just Say No advertisement were representations

concerning the tax benefits of purchasing and following the De-Taxing America Program that the appellants reasonably should have known were false."

United States v. Kaun, 827 F.2d 1144 (7th Cir. 1987) – the court affirmed the district court's injunction prohibiting the taxpayer from inciting others to submit tax returns based on false income tax theories.

United States v. Krall, 835 F.2d 711 (8th Cir. 1987) – the court held that the trusts used were shams. The defendant, an optometrist, exercised the same dominion and control over the corpus and income of the trusts as he had before the trusts were executed. The court further found the defendant illegally attempted to assign his earned income to the various trusts.

United States v. Scott, 37 F.3d 1564 (10th Cir. 1994) – the court concluded the true grantor of the trusts was in substance the purchaser, who was also the trustee, as well as the beneficiary. It was as if there were no transfers at all. Therefore the purchaser was subject to tax on all the income of the various trusts. The defendants were the promoters of a multi-tiered trust package marketed to purchasers as a device to eliminate tax liability without losing control over their assets or income.

United States v. Meek, 998 F.2d 776 (10th Cir. 1993) – the court upheld Meek's conviction of willfully failing to file an income tax return and willfully attempting to evade taxes. Meek's trust had been formed through his membership in an organization (a "warehouse bank") that provided its members the opportunity to warehouse their funds until directed to disburse them. The warehouse bank's numbering system for conducting transactions protected its members' privacy, thus hiding their assets and income.

6. Contention: A "corporation sole" can be established and used for the purpose of avoiding federal income taxes.

Advocates of this idea believe they can reduce their federal tax liability by taking the position that the taxpayer's income belongs to a "corporation sole" (these have also been referred to as "ministerial trusts"), an entity created for the purpose of avoiding taxes. A valid corporation sole is a corporate form that enables religious leaders to hold property and conduct business for the religious entity. Participants in this scheme apply for incorporation under the pretext of being an official of a church or other religious organization. Participants contend that their income is exempt from taxation because the income allegedly belongs to the corporation sole, which is claimed to be a tax exempt organization described in section 501(c)(3).

The Law: A valid corporation sole enables a bona fide religious leader, such as a bishop or other authorized religious official, to incorporate under

state law, in his capacity as a religious official. See, e.g., Berry v. Society of Saint Pius X, 69 Cal. App. 4th 354 (1999). A corporation sole may own property and enter into contracts as a natural person, but only for the purposes of the religious entity and not for the individual office holder's personal benefit. A legitimate corporation sole is designed to ensure continuity of ownership of property dedicated to the benefit of a legitimate religious organization.

A taxpayer cannot avoid income tax or other financial responsibilities by purporting to be a religious leader and forming a corporation sole for tax avoidance purposes. The claims that such a corporation sole is described in section 501(c)(3) and that assignment of income and transfer of assets to such an entity will exempt an individual from income tax are meritless. Courts have repeatedly rejected similar arguments as frivolous, imposed penalties for making such arguments, and upheld criminal tax evasion convictions against those making or promoting the use of such arguments.

The IRS issued Revenue Ruling 2004-27, 2004-1 C.B. 625, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to use this scheme.

In December 2004, a federal district court in Oregon permanently barred Judy Harkins from selling a fraudulent tax scheme promoting the use of "corporation sole." The court found that Harkins falsely told customers the plan could be used to avoid federal income tax and that Harkins knew or had reason to know the statements were false. See http://www.usdoj.gov/tax/txdv04777.htm; see also 2004 TNT 234-65 (Dec. 3, 2004). In April 2005, a federal district court in Washington entered a preliminary injunction order barring Glen Stoll from selling a fraudulent "corporation sole" and "ministerial trust" scheme on the Internet. The court found that Stoll did not create the fraudulent entities for religious reasons, but instead created them to operate businesses, such as pest-control and carpet-cleaning companies. See http://www.usdoj.gov/tax/txdv05065.htm; see also 2005 TNT 81-29 (Apr. 27, 2005).

Relevant Case Law:

United States v. Heineman, 801 F.2d 86 (2d Cir. 1986) – the court upheld the conviction and three year prison sentence imposed against the defendants for promoting use of purported church entities to avoid taxes.

United States v. Adu, 770 F.2d 1511 (9th Cir. 1985) – the court upheld the conviction against Adu for aiding and assisting in the preparation and presentation of false income tax returns with respect to false charitable deductions to purported church entities.

Svedahl v. Commissioner, 89 T.C. 245 (1987) – the court sanctioned Svedahl under section 6673 in the amount of $5,000 for using contributions to purported church entities to shield income and pay personal expenses.

II. FRIVOLOUS ARGUMENTS IN COLLECTION DUE PROCESS CASES

Under sections 6320 (pertaining to liens) and 6330 (pertaining to levies), the IRS must provide taxpayers notice and an opportunity for an administrative appeals hearing upon the filing of a notice of federal tax lien (section 6320) and prior to levy (section 6330). Taxpayers have the right to seek judicial review of the IRS's determination in these proceedings. Section 6330(d). These reviews can extend to the merits of the underlying tax liability, if the taxpayer has not previously received the opportunity for review of the merits, e.g., did not receive a notice of deficiency. Section 6330(c)(2)(B). A face-to-face administrative hearing concerning a taxpayer's underlying liability will not be granted if the hearing request raises solely frivolous arguments. Treas. Reg. §§ 301.6320-1(d)(2) Q&A D8; 301.6330-1(d)(2) Q&A D8. The Tax Court will impose sanctions pursuant to section 6673 against taxpayers who seek judicial relief based upon frivolous or groundless positions.

On December 6, 2006, Congress passed the Tax Relief and Health Care Act of 2006 (TRHCA), Pub.L. 109-432, 120 Stat. 2922 (2006). Section 407 of TRHCA made revisions to sections 6320 and 6330. The TRHCA amended section 6330 by adding new subsection (g) to provide that the IRS may disregard any portion of a section 6320 or 6330 hearing request that is based upon a position identified as frivolous by the IRS in a published list or that reflects a desire to delay or impede tax administration. Such portion shall not be subject to any further administrative or judicial review. If the entire hearing request meets one or both of these criteria, the hearing request will be denied. The TRHCA also amended section 6702 to allow imposition of a $5,000 penalty for specified frivolous submissions, including section 6320 or 6330 hearing requests, where any portion of the submission meets one or both of these criteria. See section III below. These amendments are effective for hearing requests made after March 15, 2007, the release date of Notice 2007-30, 2007-14 I.R.B. 883, identifying the list

of frivolous positions (which list was updated by Notice 2008-14, 2008-4 I.R.B. ___). Accordingly, in cases where the TRHCA amendments are applicable, a taxpayer raising only frivolous issues may not only be ineligible for a face-to-face hearing but may be denied any section 6320 or 6330 hearing.

Discussed below are some of the more common frivolous tax arguments raised in collection due process cases.

A. **Invalidity of the Assessment**

1. **Contention: A tax assessment is invalid because the taxpayer did not get a copy of the Form 23C, the Form 23C was not personally signed by the Secretary of the Treasury, or Form 23C is not a valid record of assessment.**

The Law: Tax assessments are formally recorded on a record of assessment. Section 6203. The assessment is made by an assessment officer signing the summary record of assessment. Treas. Reg. § 301.6203-1. The summary record of assessment must "provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." Id. The date of the assessment is the date the summary record is signed. Id. There is no requirement in the statute or regulation that the assessment be recorded on a specific form, that the Secretary of the Treasury personally sign it, or that the taxpayer be provided with a copy of the record of assessment before the IRS takes collection action. The IRS issued Revenue Ruling 2007-21, 2007-14 I.R.B. 865, refuting the frivolous argument that before the IRS may collect overdue taxes, the IRS must provide taxpayers with a summary record of assessment made on a Form 23-C, Assessment Certificate – Summary Record of Assessments, or on another particular form.

Relevant Case Law:

Williams v. Commissioner, T.C. Memo. 2005-94, 89 T.C.M. (CCH) 114 (2005) – in this collection due process case the court held that it was not an abuse of discretion for the appeals officer to provide copies of the transcripts of account (so-called MFTRA-X transcripts) to the taxpayer, in lieu of the copies of the assessment documents that the taxpayer had requested.

March v. Internal Revenue Service, 335 F.3d 1186, 1188 (10th Cir. 2003) – the court held that the computer-generated certificate of assessment and payment form utilized by the IRS to make assessment against the taxpayers satisfied the regulatory requirements, where this computer-generated form contained the same information as the non-computer-generated form previously used and was signed by the assessment officer.

Roberts v. Commissioner, 118 T.C. 365 (2002) – the petitioner in this collection due process case argued that an assessment was invalid because respondent did not use Form 23C, Assessment Certificate–Summary Record of Assessments, but instead used Revenue Accounting Control System (RACS) Report 006. The Tax Court held that there was nothing in the law to show that the use of the RACS report was not in compliance with the statute and regulation. The RACS report and the Form 23C are both signed by an assessment officer.

Nestor v. Commissioner, 118 T.C. 162 (2002) – the petitioner in this collection due process case requested production of certain documents at the hearing, including the Form 23C. The court held that the petitioner was not entitled to production of documents and that it was not an abuse of discretion for the appeals officer to use Form 4340, Certificate of Assessments and Payments to verify the assessment, for purposes of section 6330(c)(1). The Form 23C was not required to verify the assessment.

Perez v. Commissioner, T.C. Memo. 2002-274, 84 T.C.M. (CCH) 501 (2002) – the court held that it was not an abuse of discretion for an appeals officer to rely on a MFTRA-X transcript, rather than producing or relying upon a Form 23C, for purposes of section 6330(c)(1).

2. Contention: A tax assessment is invalid because the assessment was made from a substitute for return prepared pursuant to section 6020(b), which is not a valid return.

The Law: Section 6020(b)(1) provides that "[i]f any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." Section 6020(b)(2) further provides that any return prepared pursuant to section 6020(b)(1) shall be prima facie good and sufficient for all legal purposes. See also Treas. Reg. § 301.6020-1.

Relevant Case Law:

Nicklaus v. Commissioner, T.C. Memo. 2005-156, 89 T.C.M. (CCH) 1499 (2005) - in this collection due process case petitioners argued that the IRS could not prepare substitutes for returns for them because part 5.1.11.6.10 of the Internal Revenue Manual (IRM) (May 27, 1999) lists seven returns that may be prepared under the authority of section 6020(b) and does not mention Form 1040. The court disagreed. Under section 6020(b)(1) the IRS may prepare substitute returns for taxpayers who fail to do so themselves. IRM provisions not cited by petitioners state that the IRS may prepare substitutes for Forms 1040 under section 6020(b).

United States v. Updegrave, 97-1 U.S.T.C. ¶ 50,465 (E.D. Pa. 1997) – the taxpayer argued that tax assessments may only be calculated from tax returns filed by the taxpayer and that an inferior agent of the IRS may not file substitute returns for the taxpayer. The court rejected this argument as "utterly meritless." The court recognized that section 6020(b) authorizes the IRS to file substitute returns on behalf of taxpayers who fail to voluntarily file returns and that the substitute return "shall be prima facie good for all legal purposes." Section 6020(b)(1) and (2). The court stated that a taxpayer may not "stymie" the IRS's collection of taxes by refusing to file a tax return. The court also held that, while section 6020 authorizes the Secretary of the Treasury to prepare substitute returns, such authority has been delegated down to the District Director or any authorized IRS officer or employee. Accordingly, the substitute return and the assessments in this case were properly made by an employee of the IRS in accordance with the Internal Revenue Code.

Holland v. La. Secretary of Revenue and Taxation, 97-1 U.S.T.C. ¶ 50,403 (W.D. La. 1997) – the court rejected the taxpayer's argument that section 6020 does not apply to income taxes. The court further found that section 6065, requiring that a return be verified by a declaration under penalty of perjury, does not apply to section 6020(b) returns.

B. Invalidity of the Statutory Notice of Deficiency

1. Contention: A statutory notice of deficiency is invalid because it was not signed by the Secretary of the Treasury or by someone with delegated authority.

The Law: Section 6212(a) provides the authority for the Secretary to send notices of deficiency to taxpayers. Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate," as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. There is no statutory requirement that the notice of deficiency be signed.

Relevant Case Law:

Reynolds v. Commissioner, T.C. Memo. 2006-192, 92 T.C.M. (CCH) 260 (2006) – in this collection due process case petitioner claimed that he received invalid notices of deficiency because they were signed by the compliance center director of the Ogden Service Center instead of the Secretary. According to the court, it is well established that the Secretary or his delegates may issue notices of deficiency.

Ball v. Commissioner, T.C. Memo. 2006-141, 92 T.C.M. (CCH) 7 (2006) – in this collection due process case, petitioners argued that they received no valid notice of deficiency because the notice that they received was not signed by the Secretary of the Treasury. The court rejected this argument as frivolous.

Wheeler v. Commissioner, T.C. Memo. 2006-109, 91 T.C.M. (CCH) 1194 (2006) - the court held that a valid notice of deficiency need not be signed at all.

Nestor v. Commissioner, 118 T.C. 162 (2002) – in this collection due process case, the Tax Court held that the Secretary's authority to issue statutory notices of deficiency has been delegated to district directors and service center directors.

Michael v. Commissioner, T.C. Memo. 2003-26, 85 T.C.M. (CCH) 803 (2003) – the petitioner contested the validity of a notice of deficiency signed by a service center director. The court rejected this argument as frivolous.

Tavano v. Commissioner, 986 F.2d 1389 (11th Cir. 1993) – the court rejected petitioner's argument that the notice of deficiency was invalid because it was unsigned.

2. **Contention: A statutory notice of deficiency is invalid because the taxpayer did not file an income tax return.**

The Law: Section 6211(a) defines "deficiency" as the amount by which the tax imposed by subtitle A or B – (including income, estate, and gift taxes), or chapter 41, 42, 43, 44 (excise taxes) exceeds the excess of the sum of the amount shown as the tax by the taxpayer upon his return (if return made and amount shown thereon) plus any amounts previously assessed (or collected without assessment) as a deficiency, over the amount of rebates, as defined in section 6211(b)(2), made. In accordance with this definition, a taxpayer's failure to report tax on a return does not prevent the Service from determining a deficiency in his federal income tax and issuing a notice of deficiency, pursuant to section 6212(a).

Relevant Case Law:

Robinson v. Commissioner, T.C. Memo. 2002-316, 84 T.C.M. (CCH) 694 (2002) – the court found the petitioner liable for the section 6673(a) penalty in this case where petitioner argued, among other frivolous arguments, that the Service was not authorized to determine a deficiency for a taxpayer who has not filed a return.

C. Invalidity of Notice of Federal Tax Lien

1. **Contention: A notice of federal tax lien is invalid because it is unsigned or not signed by the Secretary of the Treasury, or because it was filed by someone without delegated authority.**

The Law: The form and content of the notice of federal tax lien is controlled by federal law. Section 6323(f)(3) provides that the form and content of the notice of federal tax lien shall be prescribed by the Secretary and shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien. Treas. Reg. § 301.6323(f)-1(d) further provides that the notice of federal tax lien is filed on a Form 668, which must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose.

Relevant Case Law:

United States v. Union Cent. Life Ins. Co., 368 U.S. 291, 294 (1961) – the Supreme Court held that the form used for filing a federal tax lien does not have to comply with an additional state law requirement that it describe the property affected, although the lien did have to be filed in a designated state office.

Tolotti v. Commissioner, T.C. Memo. 2002-86, 83 T.C.M. (CCH) 1436 (2002) – in this collection due process case, the court upheld the validity of a notice of federal tax lien filed on Form 668(Y) and bearing a facsimile signature, although the lien was not certified as required by Nevada statute. The court noted that it is "well-settled" that the form and content of the notice of federal tax lien is controlled by federal, not state, law.

Section 6323(a) provides that "[t]he lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lien holder, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary." Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate", as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. See, e.g., Delegation Order 5-4, Rev. 1) (delegating authority to sign notices of federal tax lien). There is no requirement in the statute or regulation that the notice of federal tax lien must be signed when filed.

Relevant Case Law:

Thompson v. Commissioner, T.C. Memo. 2004-204, 88 T.C.M. (CCH) 219 (2004) – in a collections due process case the court rejected petitioner's arguments as frivolous and groundless, including petitioner's contention

that the notice of federal tax lien that he received was invalid because it was not signed by the Secretary. The Secretary had delegated the authority to issue notices of lien to certain IRS employees.

Uveges v. United States, 2002-2 U.S.T.C. ¶ 50,740 (D. Nev. 2002) B the court noted that with respect to section 6323, among other Code sections, which use the term "Secretary," "Secretary" refers to the Secretary of the Treasury and any delegates. See section 7701(a)(11)(B).

In re Kroll, 74 A.F.T.R.2d 94-6161 (W.D.Mich 1994) – in this bankruptcy case the taxpayer-debtors challenged the notice of federal tax lien on the ground that it was not signed. The court found that neither the statute nor regulations relating to such lien require that the notice be signed, nor had the debtors provided any explicit authority requiring that the notice be signed to be valid.

2. **Contention: The form or content of a notice of federal tax lien is controlled by or subject to a state or local law, and a notice of federal tax lien that does not comply in form or content with a state or local law is invalid.**

The Law:

The form and content of the notice of federal tax lien is controlled by federal law. Section 6323(f)(3) provides that the form and content of the notice of federal tax lien shall be prescribed by the Secretary and shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien. Treas. Reg. § 301.6323(f)-1(d) further provides that the notice of federal tax lien is filed on a Form 668, which must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose

Relevant Case Law:

United States v. Union Cent. Life Ins. Co., 368 U.S. 291, 294 (1961) - the Supreme Court held that the form used for filing a federal tax lien does not have to comply with an additional state law requirement that it describe the property affected, although the lien did have to be filed in a designated state office.

Tolotti v. Commissioner, T.C. Memo. 2002-86, 83 T.C.M. (CCH) 1436 (2002) - in this collection due process case, the court upheld the validity of a notice of federal tax lien filed on Form 668(Y) and bearing a facsimile signature, although the lien was not certified as required by Nevada statute. The court noted that it is "well-settled" that the form and content of the notice of federal tax lien is controlled by federal, not state, law.

D. Invalidity of Collection Due Process Notice

1. Contention: A collection due process notice (Letter 1058, LT-11 or Letter 3172) is invalid because it is not signed by the Secretary or his delegate.

The Law: Section 6320(a)(1) provides that the Secretary shall notify a taxpayer in writing of the filing of a notice of federal tax lien, pursuant to section 6323, advising the taxpayer of the right to request a collection due process hearing. Section 6330(a)(1) provides that no levy may be made on any property or rights to property of any person unless the Secretary has notified such person of his or her right to a collection due process hearing before levy. There is no requirement for a signature on the collection due process notice in the statute or regulations.

Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate", as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. Section 7803(a)(2) provides general authority for the Commissioner of Internal Revenue, as prescribed by the Secretary. Treas. Reg. §§ 301.6320-1(a)(1) and 301.6330-1(a)(1) further provide that the Commissioner, or his or her delegate, will prescribe procedures to provide notice of the right to request a collection due process hearing. See, e.g., Delegation Order 5-3 (formerly D.O. 191 Rev. 3) (redelegation of authority with respect to levy notices).

Relevant Case Law:

Craig v. Commissioner, 119 T.C. 252 (2002) – the court held that for purposes of section 6330(a), either the Secretary or his delegate (e.g., the Commissioner) may issue a final notice of intent to levy. In this case, the authority to levy was delegated to the Automated Collection Branch Chiefs pursuant to Delegation Order No. 191 (Rev. 2), effective October 1, 1999. Accordingly, the notice of intent to levy was valid.

Hodgson v. Commissioner, T.C. Memo. 2003-122, 85 T.C.M. (CCH) 1232 (2003) – taxpayer alleged that respondent's determination was lawless and erroneous for numerous reasons, including the fact that the section 6320 lien notice was not signed by the Secretary or his delegate. The court held that the allegations were frivolous and without any merit, and declined to address them. The court found the taxpayer liable for a section 6673(a) penalty.

2. Contention: A collection due process notice is invalid because no certificate of assessment is attached.

The Law: Sections 6320(a)(3) and 6330(a)(3) list the information required to be included with the collection due process notice, such as the amount of unpaid tax, the right of the person to request a collection due process hearing, administrative appeals available, and the provisions of the Internal Revenue Code and procedures pertaining to the notice of federal tax lien or levy. See also Treas. Reg. §§ 301.6320-1(a)(2), Q&A A10 and 301.6330-1(a)(3), Q&A A6. There is no requirement in the statute or regulations that a certificate of assessment be attached to the collection due process notice.

E. Verification Given as Required by I.R.C. § 6330(c)(1)

1. Contention: Verification requires the production of certain documents.

The Law: Pursuant to sections 6320(c) and 6330(c)(1), at a collection due process hearing, the appeals officer is required to obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Section 6330(c)(1) does not require the appeals officer to rely upon a particular document (e.g., the summary record of assessment) to satisfy the verification requirement. Section 6330(c)(1) also does not require the appeals officer to give the taxpayer a copy of the verification upon which the appeals officer relied. See also Treas. Reg. §§ 301.6320-1(e)(1) and 301.6330-1(e)(1). There is no requirement in the statute or regulations that the taxpayer be provided with any documents as a part of the verification process. As a matter of practice, however, the taxpayer will be provided with a transcript of account such as a Form 4340 or MFTRA-X computer transcript. Transcripts such as the Form 4340 or MFTRA-X, which identify the taxpayer, the character of the liability assessed, the taxable period and the amount of the assessment, are sufficient to show the validity of an assessment, absent a showing of irregularity.

Relevant Case Law:

Craig v. Commissioner, 119 T.C. 252 (2002) – the court held that section 6330(c)(1) does not require the appeals officer to rely upon a particular document, such as the summary record of assessment, in order to satisfy the verification requirement of section 6330(c)(1). Nor does it mandate that the appeals officer actually provide the taxpayer with a copy of the verification upon which the appeals officer relied. Taxpayer was provided with Forms 4340, and did not demonstrate the invalidity of the assessment or any of the information contained in the Forms 4340.

Nestor v.Commissioner, 118 T.C. 162 (2002) – appeals officer's review of Forms 4340 is sufficient to meet the verification requirement in section 6330(c)(1). Actual production of documents is not required.

Davis v. Commissioner, 115 T.C. 35 (2000) – appeals officer did not abuse his discretion in relying on a Form 4340 to verify the validity of an assessment, where the taxpayer can point to no evidence of irregularity in the assessment process.

Standifird v. Commissioner, T.C. Memo. 2002-245, 84 T.C.M. (CCH) 371 (2002) – MFTRA-X transcript may be used for verification.

Schroeder v. Commissioner, T.C. Memo. 2002-190, 84 T.C.M. (CCH) 141 (2002) – TXMOD-A transcript is sufficient for verification.

Wagner v. Commissioner, T.C. Memo. 2002-180, 84 T.C.M. (CCH) 96 (2002) – Individual Master File–Martinsburg Computing Center Transcript is sufficient for verification.

F. Invalidity of Statutory Notice and Demand

1. Contention: No notice and demand, as required by I.R.C. § 6303, was ever received by taxpayer.

The Law: Section 6303(a) provides that the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. This notice is to be left at the dwelling or usual place of business of such person, or shall be mailed to such person's last known address. See also Treas. Reg. § 301.6303-1(a) (failure to give notice within 60 days does not invalidate notice). Nothing in the statute or regulation requires the Service to establish receipt of the notice and demand, as long as it is mailed to the taxpayer's last known address.

At a collection due process hearing, an appeals officer may rely upon a computer transcript to verify that notice and demand for payment has been sent to a taxpayer in accordance with section 6303. For example, the entry in a Form 4340 showing "notice of balance due" is a section 6303 notice and demand. On a TXMOD-A transcript, "status 21" indicated in the notice section indicates a section 6303 notice and demand.

Relevant Case Law:

Reynolds v. Commissioner, T.C. Memo. 2006-192, 92 T.C.M. (CCH) 260 (2006) – in this collection due process case petitioner alleged he did not receive a notice and demand for payment. According to the court, a notice of balance due constitutes a notice and demand for payment for

purposes of section 6303(a). The Forms 4340 showed that the IRS had promptly sent petitioner notices of balance due.

Craig v. Commissioner, 119 T.C. 252, 262-63 (2002) – Forms 4340 showed that petitioner was sent notices of balance due on the same dates as assessments were made. The court held that a notice of balance due on a Form 4340 constitutes notice and demand for purposes of section 6303(a). The court further noted that the form on which a notice of assessment and demand for payment is made is irrelevant as long as it provides the taxpayer with all the information required under section 6303(a).

United States v. Chila, 871 F.2d 1015, 1019 (11th Cir. 1989) – the Eleventh Circuit held that the notice and demand requirements of section 6303 were only applicable to summary enforcement procedures, not as a prerequisite to filing a civil action. The court further noted that, even if notice was not required under section 6303, proper notice was given as established by the Form 4340. Taxpayer did not deny on the record that the notice was sent. He denied only that he had received it.

United States v. Lisle, 92-1 U.S.T.C. ¶ 50,286 (N.D. Cal.), citing Thomas v. United States, 755 F.2d 728 (9th Cir. 1985) – Taxpayer claimed that liens were invalid because the government failed to give her proper notice and demand for payment as required by sections 6303(a) and 6321. The Service submitted documentation establishing that it sent the taxpayer notice. Proof that notice was sent is sufficient; the government need not prove receipt.

2. Contention: A notice and demand is invalid because it is not signed, it is not on the correct form (such as Form 17), or because no certificate of assessment is attached.

The Law: Section 6303(a) provides that the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. This notice is to be left at the dwelling or usual place of business of such person, or shall be mailed to such person's last known address. See also Treas. Reg. § 301.6303-1(a) (failure to give notice within 60 days does not invalidate notice). Notice and demand is sufficient for purposes of section 6303 as long as it states the amount due and makes demand for payment. There is no requirement in the statute or regulation that the notice and demand be made on a specific form, have a signature, or include any specific attachments.

Relevant Case Law:

Flathers v. Commissioner, T.C. Memo. 2003-60, 85 T.C.M. (CCH) 969 (2003) – court rejected as frivolous and/or groundless petitioner's argument that she did not receive proper notice and demand under section 6303(a) because, according to petitioner, the IRS must use Form 17 in issuing such notice and demand.

Craig v. Commissioner, 119 T.C. 252 (2002) – numerous notices received by petitioner, such as notices of intent to levy and notices of deficiency, were sufficient to meet the requirements of section 6303(a). The form on which notice of assessment and demand for payment is made is irrelevant, as long as it provides the taxpayer with the information specified in section 6303(a).

Keene v. Commissioner, T.C. Memo. 2002-277, 84 T.C.M. (CCH) 514 (2002) – notices such as final notice of intent to levy and Forms 4340 are sufficient to constitute notice and demand within the meaning of section 6303(a) because they informed petitioner of the amount owed and requested payment. The court rejected petitioner's argument as frivolous and groundless that a notice and demand for payment was not in accord with a Treasury decision issued in 1914 that required a Form 17 be used for such purpose.

G. Tax Court Authority

1. Contention: The Tax Court does not have the authority to decide legal issues.

The Law: The United States Tax Court is a federal court of record established by Congress under Article I of the United States Constitution. Congress created the Tax Court to provide a judicial forum in which affected persons could dispute tax deficiencies prior to payment of the disputed amount. The jurisdiction of the Tax Court includes the authority to hear tax disputes concerning notices of deficiency, notices of transferee liability, certain types of declaratory judgment, readjustment and adjustment of partnership items, review of the failure to abate interest, administrative costs, worker classification, relief from joint and severable liability on a joint return, and review of collection due process actions.

Section 7441 provides that "[t]here is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court." Section 7442 provides the "[t]he Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by Chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926." See also sections 7443-7448.

Relevant Case Law:

Freytag v. Commissioner, 501 U.S. 868 (1991) – petitioners alleged that the adjudication of their case by a special trial judge was not authorized by section 7443A, and that the reassignment violated the appointments clause of U.S. Const. art. II, § 2, cl. 2. The court of appeals rejected petitioners' claims and affirmed. The Supreme Court granted certiorari and affirmed, holding that section 7443A(b)(4) authorized the chief judge's assignment of petitioners' cases to the special trial judge. The Court further concluded that the special trial judge's appointment did not violate the Appointments Clause because the Tax Court's role in the federal judicial scheme closely resembled that of Article I courts, which were given appointment power by the United States Constitution.

Burns, Stix Friedman & Co., Inc. v. Commissioner, 57 T.C. 392 (1971) – petitioner sought review of income tax deficiencies, prior to the effective date of the Tax Reform Act of 1969 (the Act), Pub. L. 91-172. The petitioner contended that Congress exceeded its authority in creating the court as a court of record under U.S. Const. art I without regard to the sanctions of art. III. The court held that the provisions in the Act that removed the court from the executive branch, made the court a court of record, gave the court the power to punish for contempt, made review of the court's decisions by appeal rather than by petition for review, and simply recognized the court as a "court," was within Congress' authority without reliance upon U.S. Const. art. III.

Knighten v. Commissioner, 705 F.2d 777 (5th Cir. 1983) – petitioner argued that, as a court created under Article I of the Constitution, the Tax Court could not hear any cases that could be heard by Article III courts. The court held that this contention was frivolous and that the argument that the Tax Court violates Article III has been repeatedly rejected.

Martin v. Commissioner, 358 F.2d 63 (7th Cir. 1966) – petitioners' contention that the Tax Court is without a valid constitutional existence lacks substance and merit.

H. Challenges to the Authority of IRS Employees

1. Contention: Revenue Officers are not authorized to seize property in satisfaction of unpaid taxes.

The Law: Section 6331(a) provides that "[i]f any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax ... by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax." Section 6331(b) provides that the term "levy" includes the power of distraint and seizure by

any means. In any case in which the Secretary may levy upon property or property rights, he may also seize and sell such property or property rights. Section 6331(b).

Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate," as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. See Treas. Reg. § 301.6331-1(a)(1) (district director is authorized to levy). See e.g., Delegation Order 5-3 (formerly D.O. 191 Rev. 3) (redelegation of authority with respect to levies to revenue officers and other Service employees).

Relevant Case Law:

Craig v. Commissioner; 119 T.C. 252 (2002) – the authority to levy on petitioner's property was delegated to Automated Collection Branch Chiefs pursuant to Delegation Order No. 191 (Rev. 2), effective October 1, 1999.

2. **Contention: IRS employees lack credentials. For example, they have no pocket commission or the wrong color identification badge.**

The Law: The authority of IRS employees is derived from Internal Code provisions, Treasury Regulations, and other redelegations of authority (such as delegation orders). See the previous discussion on the authority of revenue officers to seize property. The authority of IRS employees is not contingent upon such criteria as possession of a pocket commission or a specific type of identification badge.

Relevant Case Law:

Gunselman v. Commissioner, T.C. Memo. 2003-11, 85 T.C.M. (CCH) 756 (2003) – appeals officer at collection due process hearing does not have to produce enforcement pocket commission for himself of for the Service employee who signed the notice of lien filing.

I. Use of Unauthorized Representatives

1. **Contention: Taxpayers are entitled to be represented at hearings, such as collection due process hearings, and in court, by persons without valid powers of attorney.**

The Law: Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or

who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary, in Circular No. 230 (31 CFR part 10), published regulations that authorize the Director, Office of Professional Responsibility, to act upon applications for enrollment to practice before the Service, to make inquiries with respect to matters under the Director's jurisdiction, and to perform such other duties as are necessary to carry out these functions. The regulations were most recently amended on July 26, 2002 (T.D. 9011, 2002-33 I.R.B. 356 [67 FR 48760] to clarify the general standards of practice before the Service. Pursuant to Circular No. 230, a representative must be an attorney in good standing, a certified professional accountant, or an enrolled tax return preparer in good standing. Attorneys and non-attorneys are only entitled to practice before the United States Tax Court upon application and admission to practice, pursuant to Tax Court Rule of Practice and Procedure 200.

Relevant Case Law:

Young v. Commissioner, T.C. Memo. 2003-6, 85 T.C.M. (CCH) 739 (2003) – third party was not entitled to represent taxpayer in a collection due process hearing because of non-compliance with Circular No. 230.

Katz v. Commissioner, 115 T.C. 329 (2000) – collection due process hearings are informal, with no right to summons witnesses.

J. No Authorization Under I.R.C. § 7401 to Bring Action

1. Contention: The Secretary has not authorized an action for the collection of taxes and penalties or the Attorney General has not directed an action be commenced for the collection of taxes and penalties.

The Law: Section 7401 provides that "[n]o civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced." Treas. Reg. § 301.7401-1(a) further provides that such action must be authorized by the Commissioner (or the Director, Alcohol, Tobacco and Firearms Division, with respect to subtitle E of the Code), or Chief Counsel for the IRS or his delegate, and such action must be commenced by the Attorney General or his delegate.

Section 7701(a)(11)(B) defines "Secretary" to include the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines the term "delegate," as used with respect to the Secretary of the Treasury, to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. Section 7803(a)(2) provides

general authority for the Commissioner of Internal Revenue, as prescribed by the Secretary.

The Attorney General is the head of the Department of Justice, appointed by the President. 28 U.S.C. § 503. The Attorney General may from time to time make such provisions as he or she deems appropriate delegating authority to any other officer, employee, or agency of the Department of Justice. 28 U.S.C. § 510. See 28 U.S.C. §§ 501-530D.

Relevant Case Law:

Perez v. United States, 2001-2 U.S.T.C. ¶ 50,735 (W.D.Tex. 2001) – plaintiff requested the court to dismiss defendant's counterclaim because defendant did not attach a certified copy of the document in which the Attorney General or a United States Attorney authorized a cause of action against plaintiff, pursuant to section 7401. The court held that section 7401 does not require production of such document. Courts may ordinarily presume that the United States complied with section 7401 and obtained proper authorization to commence an action for the collection of taxes. However, since the plaintiff contested such compliance, the United States had to show that the counterclaim was in fact authorized. The court held that the United States demonstrated compliance with section 7401 by producing a letter from the Office of Chief Counsel for the IRS to a United States Attorney and a declaration from the counsel of record for the United States.

United States v. Bodwell, 96-2 U.S.T.C. ¶ 50,592 (E.D. Cal. 1996) – the court noted that the defendant's argument that this suit was not authorized because section 7401 is rooted in the Federal Regulations concerning the Bureau of Alcohol, Tobacco and Firearms has been "flatly rejected" by the Ninth Circuit.

United States v. Nuttall, 713 F. Supp. 132 (D. Del. 1989) – affidavit from the Chief, Civil Trial Section, Central Region, Tax Division, United States Department of Justice attached to government's summary judgment motion established authorization of the Secretary of the Treasury/Internal Revenue Service. Department of Justice Tax Division Memorandum No. 83-19, dated May 5, 1983, also attached, established authorization by the Attorney General to commence the action.

III. PENALTIES FOR PURSUING FRIVOLOUS TAX ARGUMENTS

Those who act on frivolous positions risk a variety of civil and criminal penalties. Those who adopt these positions may face harsher consequences than those who merely promote them. As the Seventh Circuit Court of Appeals noted in United States v. Sloan, 939 F.2d 499, 499-500 (7th Cir. 1991), "Like moths to a flame, some people find themselves irresistibly drawn to the tax protester

movement's illusory claim that there is no legal requirement to pay federal income tax. And, like moths, these people sometimes get burned."

Taxpayers filing returns with frivolous positions may be subject to the accuracy-related penalty under section 6662 (twenty percent of the underpayment attributable to negligence or disregard of rules or regulations) or the civil fraud penalty under section 6663 (seventy-five percent of the underpayment attributable to fraud) or the erroneous claim for refund penalty under section 6676 (twenty percent of the excessive amount). Additionally, late filed returns setting forth frivolous positions may be subject to an addition to tax under section 6651(f) for fraudulent failure to timely file an income tax return (triple the amount of the standard failure to file addition to tax under section 6651(a)(1)). See Mason v. Commissioner, T.C. Memo. 2004-247, 88 T.C.M. (CCH) 398 (2004) (frivolous arguments may be indicative of fraud if made in conjunction with affirmative acts designed to evade paying federal income tax).

The Tax Relief Health Care Act of 2006 amended section 6702 to allow imposition of a $5,000 penalty for frivolous tax returns and for specified frivolous submissions other than returns, if the purported returns or specified submissions are either based upon a position identified as frivolous by the IRS in a published list or reflect a desire to delay or impede tax administration. Pub.L. 109-432, 120 Stat. 2922 (2006). The term specified submission means: a request for a hearing under section 6320 (relating to notice and opportunity for hearing on filing of a notice of lien), a request for hearing under section 6330 (relating to notice and opportunity for hearing before levy), an application under section 6159 (relating to agreements for payment of tax liability in installments), an application under section 7122 (relating to compromises), or an application under section 7811 (relating to taxpayer assistance orders). This amendment is effective for frivolous returns or specified frivolous submissions made after March 15, 2007, the release date of Notice 2007-30, 2007-14 I.R.B. 883, identifying the list of frivolous positions. Notice 2008-14, 2008-4, I.R.B. ___, updates the prior list with four additional frivolous positions: (1) the Ninth Amendment to the U.S. Constitution allows a taxpayer to not pay taxes because of objections to military spending; (2) only fiduciaries are taxpayers, or only persons with a fiduciary relationship to the government must pay taxes; (3) a supposed "Mariner's Tax Deduction" (or the like) allows a taxpayer employed on a ship to deduct the cost of meals provided by the employer at no cost to the taxpayer; and (4) the section 6421 fuels credit may be claimed in patently unallowable amounts without meeting the requirements for the credit.

In the 1980s, Congress showed its concern about taxpayers misusing the courts and obstructing the appeal rights of others when it enacted tougher sanctions for bringing frivolous cases before the courts. Section 6673 allows the courts to impose a penalty of up to $25,000 when they come to any of three conclusions:

- a taxpayer instituted a proceeding primarily for delay,
- a position is frivolous or groundless, or

- a taxpayer unreasonably failed to pursue administrative remedies.

An appeals court explained the rationale for the sanctions in Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986): "The purpose of § 6673 . . . is to induce litigants to conform their *behavior* to the governing rules regardless of their subjective beliefs. Groundless litigation diverts the time and energies of judges from more serious claims; it imposes needless costs on other litigants. Once the legal system has resolved a claim, judges and lawyers must move on to other things. They cannot endlessly rehear stale arguments . . . . [T]here is no constitutional right to bring frivolous suits . . . . People who wish to express displeasure with taxes must choose other forums, and there are many available."

Taxpayers who rely on frivolous arguments may also face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201, a felony, for which the penalty is a fine of up to $250,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206(1), a felony, for which the penalty is a fine of up to $250,000 and imprisonment for up to 3 years.

Persons who promote frivolous arguments and those who assist taxpayers in claiming tax benefits based on such arguments may also face various penalties such as: (1) a $250 penalty under section 6694 for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or $1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a $1,000 penalty under section 6701 for aiding and abetting an understatement of tax; and (3) criminal felony prosecution under section 7206(2) for which the penalty is up to $250,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws.

Further, promoters who fail to comply with court orders run the risk of incarceration for contempt of court. A tax scam promoter named James A. Mattatall was arrested for failing to provide list of the names, addresses, phone numbers, and Social Security numbers of his customers to the Justice Department per the court's order. See http://www.usdoj.gov/tax/txdv04699.htm. Also, a taxpayer named Charles D. Saunders was held in civil contempt, incarcerated and fined $250 a day until he complied with the court's order directing him to fully comply with a summons from the IRS. See 2006 TNT 164-16 (August 18, 2006).

Relevant Case Law:

Jones v. Commissioner, 688 F.2d 17 (6th Cir. 1982) – the court found the taxpayer's claim that his wages were paid in "depreciated bank notes" as clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

Baskin v. United States, 738 F.2d 975 (8th Cir. 1984) – the court found that the IRS's assessment of a frivolous return penalty without a judicial hearing was not a denial of due process, since there was an adequate opportunity for a later judicial determination of legal rights.

Holker v. United States, 737 F.2d 751, 752-53 (8th Cir. 1984) – the court upheld the frivolous return penalty even though the taxpayer claimed the documents he filed to claim a refund did not constitute a tax return. Noting that "[t]axpayers may not obtain refunds without first filing returns," the court then found that "[h]is unexplained designation of his W-2 forms as 'INCORRECT' and his attempt to deduct his wages as the cost of labor on Schedule C also establish the frivolousness and incorrectness of his position."

Rowe v. United States, 583 F. Supp. 1516, 1520 (D. Del. 1984) – the court upheld the viability of section 6702 against various objections, including that it was unconstitutionally vague because it does not define a "frivolous" return. "Frivolous is commonly understood to mean having no basis in law or fact," the court stated.

Szopa v. United States, 460 F.3d 884 (7th Cir. 2006) – the court found that a frivolous tax appeal warrants a presumptive sanction of $4,000, but that the court would impose an $8,000 sanction against taxpayers who make repeated frivolous appeals as Szopa did.

Gass v. United States, 2001-1 U.S.T.C. (CCH) ¶ 50,220 (10th Cir. 2001) – the court imposed an $8,000 penalty for contending that taxes on income from real property are unconstitutional. The court had earlier penalized the taxpayers $2,000 for advancing the same arguments in another case.

Brashier v. Commissioner, 2001-1 U.S.T.C. (CCH) ¶ 50,356 (10th Cir. 2001) – the court imposed $1,000 penalties on taxpayers who argued that filing sworn income tax returns violated their Fifth Amendment privilege against self-incrimination, after the Tax Court had warned them that their argument – rejected consistently for more than seventy years – was frivolous.

McAfee v. United States, 2001-1 U.S.T.C. (CCH) ¶ 50,433 (N.D. Ga. 2001) – after losing the argument that his wages were not income and receiving a $500 penalty, the taxpayer returned to court to try to stop the government from collecting that penalty by garnishing his wages. The court stated that "bringing this ill-considered, nonsensical litigation before this court for yet a second time is nothing but contumacious foolishness which wastes the time and energy of the court system," and imposed a $1,000 penalty.

United States v. Rempel, 87 A.F.T.R.2d (RIA) 1810 (D. Ark. 2001) – the court warned the taxpayers of sanctions and stated: "It is apparent to the court from some of the papers filed by the Rempels that they have at least had access to some of the publications of tax protester organizations. The publications of these

organizations have a bad habit of giving lots of advice without explaining the consequences which can flow from the assertion of totally discredited legal positions and/or meritless factual positions."

Sanctions Imposed Generally in Tax Court Cases:

Hanloh v. Commissioner, T.C. Memo. 2006-194, 92 T.C.M. (CCH) 266 (2006) - the court imposed sanctions of $25,000 where the taxpayer continued to advance frivolous and groundless arguments after having been warned that making those arguments would result in sanctions.

Stallard v. Commissioner, T.C. Memo. 2006-42, 91 T.C.M. (CCH) 881 (2006) - the court imposed sanctions of $25,000 where the taxpayer raised only frivolous and groundless arguments noting that the taxpayer had been warned in the current proceeding, and sanctioned in a prior proceeding, for raising frivolous arguments.

Silver v. Commissioner, T.C. Memo. 2005-281, 90 T.C.M. (CCH) 559 (2005) – the court imposed sanctions of $25,000 against the taxpayer for filing a frivolous suit challenging his tax liability and making only groundless arguments.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005 aff'd, 436 F.3d 533 (5th Cir. 2006) – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

Howard v. Commissioner, T.C. Memo. 2005-144, 89 T.C.M. (CCH) 1449 (2005) – the court imposed a $12,500 penalty against the taxpayer, who had been sanctioned previously, for making frivolous arguments and instituting the court proceedings primarily for delay.

Brenner v. Commissioner, T.C. Memo. 2004-202, 88 T.C.M. (CCH) 212 (2004) – the court imposed sanctions of $15,000 against the taxpayer where he continued making frivolous arguments despite being specifically warned by the court against doing so.

Chase v. Commissioner, T.C. Memo 2004-142, 87 T.C.M. (CCH) 1414 (2004) – the court imposed sanctions of $20,000 against the taxpayer for continuing to make frivolous arguments even though the court warned him that he would likely be penalized if he persisted.

Trowbridge v. Commissioner, T.C. Memo. 2003-164, 85 T.C.M. (CCH) 1450 (2003) – the court imposed sanctions against former husband and wife, $25,000

for Mr. Trowbridge and $15,000 for Ms. Martin, where the taxpayers failed to raise a single plausible argument.

Hill v. Commissioner, T.C. Memo. 2003-144, 85 T.C.M. (CCH) 1328, 1331 (2003) – the court imposed a $15,000 penalty against the taxpayer because he disregarded warnings from the court that his position was without merit. Furthermore, the taxpayer had been previously sanctioned by the court in another proceeding for raising frivolous arguments.

Nunn v. Commissioner, T.C. Memo. 2002-250, 84 T.C.M. (CCH) 403, 410 (2002) – the court, on its own motion, imposed sanctions against the taxpayers in the amount of $7,500 after warning taxpayers repeatedly that their frivolous arguments could subject them to a penalty, stating "[w]here pro se litigants are warned that their claims are frivolous . . . and where they are aware of the ample legal authority holding squarely against them, a penalty is appropriate."

Sawukaytis v. Commissioner, T.C. Memo. 2002-156, 83 T.C.M. (CCH) 1886, 1888 (2002) – the court imposed a $12,500 penalty against the taxpayer for arguing the income tax is an excise tax and that he did not engage in excise taxable activities. The court found the taxpayer's "position, based on stale and meritless contentions, is manifestly frivolous and groundless."

Ward v. Commissioner, T.C. Memo. 2002-147, 83 T.C.M. (CCH) 1820, 1824 (2002) – the court imposed sanctions against the Wards in the amount of $25,000 stating that "[t]heir insistence on making frivolous protester type arguments indicates an unwillingness to respect the tax laws of the United States."

Gill v. Commissioner, T.C. Memo. 2002-146, 83 T.C.M. (CCH) 1816, 1819 (2002) – the court imposed a $7,500 penalty against the taxpayer stating the taxpayer's "insistence on making frivolous protester type arguments indicates an unwillingness to respect the tax laws of the United States."

Monaghan v. Commissioner, T.C. Memo. 2002-16, 83 T.C.M. (CCH) 1102, 1104 (2002) – the court rejected the taxpayer's frivolous arguments and imposed sanctions in the amount of $1,500, stating that "[h]e has caused this Court to waste its limited resources on his erroneous views of the tax law which he should have known are completely without merit."

Hart v. Commissioner, T.C. Memo. 2001-306, 82 T.C.M. (CCH) 934 (2001) – the court imposed sanctions in the amount of $15,000 against the taxpayer, because his delaying actions caused the Service and the court to needlessly spend time preparing for the trial and writing the opinion.

Sigerseth v. Commissioner, T.C. Memo.2001-148, 81 T.C.M. (CCH) 1792, 1794 (2001) – pointing out that this case involving the use of trusts to avoid taxes was "a waste of limited judicial and administrative resources that could have been

devoted to resolving bona fide claims of other taxpayers," the court imposed a $15,000 penalty.

MatrixInfoSys Trust v. Commissioner, T.C. Memo. 2001-133, 81 T.C.M. (CCH) 1726, 1729 (2001) – in claiming that his income belonged to his trust, the court stated that the taxpayer had made "shopworn arguments characteristic of the tax-protester rhetoric that has been universally rejected by this and other courts," and imposed a $12,500 penalty.

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000) – after having warned the taxpayer that continuing with his frivolous arguments – that he was not a taxpayer, that his income was not taxable, and that only foreign income was taxable – would likely result in a penalty, the court imposed the maximum $25,000 penalty.

Haines v. Commissioner, T.C. Memo. 2000-126, 79 T.C.M. (CCH) 1844, 1846 (2000) – stating, "[p]etitioner knew or should have known that his position was groundless and frivolous, yet he persisted in maintaining this proceeding primarily to impede the proper workings of our judicial system and to delay the payment of his Federal income tax liabilities," the court imposed a $25,000 penalty.

Sanctions Imposed in Collection Due Process Cases:

Hassell v. Commissioner, T.C. Memo. 2006-196, 92 T.C.M. (CCH) 273 (2006) – the court imposed sanctions against the taxpayer in the amount of $10,000 for continuing to assert frivolous arguments.

Forbes v. Commissioner, T.C. Memo. 2006-10, 91 T.C.M. (CCH) 672 (2006) - the court imposed a $20,000 sanction against the taxpayer holding the he failed to assert any coherent claims and only raised frivolous arguments

Burke v. Commissioner, 124 T.C. 189 (2005) – the court imposed a $2,500 penalty against Burke for wasting judicial resources with his frivolous arguments even though Burke abandoned several frivolous arguments at trial.

Carrillo v. Commissioner, T.C. Memo. 2005-290, 90 T.C.M. (CCH) 608 (2005) – the court imposed a $5,000 sanction against the taxpayers for making frivolous arguments despite being alerted to the potential use of sanctions against them.

Wetzel v. Commissioner, T.C. Memo. 2005-211, 90 T.C.M. (CCH) 266 (2005) – the court imposed a $15,000 penalty against Wetzel, a professional tax return preparer, for making frivolous arguments because he knew or should have known the arguments were frivolous.

Hamzik v. Commissioner, T.C. Memo. 2004-223, 88 T.C.M. (CCH) 316 (2004) – the court imposed sanctions of $15,000 against the taxpayer for his insistence in

making frivolous arguments subsequent to the court warning him of the likelihood of penalties being imposed.

Aston v. Commissioner, T.C. Memo. 2003-128, 85 T.C.M. (CCH) 1260 – the court imposed a $25,000 penalty against the taxpayer for continuing to maintain frivolous arguments, despite having been warned in a previous proceeding before the court that those arguments were without merit.

Fink v. Commissioner, T.C. Memo. 2003-61, 85 T.C.M. (CCH) 976, 980 – the court imposed a $2,000 penalty against the taxpayer for raising "primarily for delay, frivolous arguments and/or groundless contentions, arguments, and requests, thereby causing the Court to waste its limited resources."

Eiselstein v. Commissioner, T.C. Memo. 2003-22, 85 T.C.M. (CCH) 794, 796 (2002) – the court imposed a penalty of $5,000 against the taxpayer for raising "frivolous tax-protester arguments" and referred to the "unequivocal warning" issued by the court in Pierson v. Commissioner concerning the imposition of sanctions against taxpayers abusing the protections provided for in sections 6320 and 6330.

Haines v. Commissioner, T.C. Memo. 2003-16, 85 T.C.M. (CCH) 771, 773 (2003) – the court imposed a penalty of $2,000 against the taxpayers for making "protester arguments which have, on numerous occasions, been rejected by the courts."

Gunselman v. Commissioner, T.C. Memo. 2003-11, 85 T.C.M. (CCH) 756, 759 (2003) – the court imposed a penalty of $1,000 against the taxpayer who argued "that there is no Internal Revenue Code section that makes him liable for taxes." The court characterized the taxpayer's argument as a "frivolous, tax-protester argument."

Young v. Commissioner, T.C. Memo. 2003-6, 85 T.C.M. (CCH) 739, 742 (2003) – the court imposed a penalty of $500 against the taxpayer for "raising the same arguments that [the court has] previously and consistently rejected as frivolous and groundless."

Roberts v. Commissioner, 118 T.C. 365, 372-73 (2002) - the court imposed a $10,000 penalty against Roberts for making frivolous arguments stating "[i]n Pierson v. Commissioner . . . we issued an unequivocal warning to taxpayers concerning the imposition of a penalty under section 6673(a) on those taxpayers who abuse the protections afforded by sections 6320 and 6330 by instituting or maintaining actions under those sections primarily for delay or by taking frivolous or groundless positions in such actions."

Rennie v. Commissioner, T.C. Memo. 2002-296, 84 T.C.M. (CCH) 611, 614 (2002) – the court imposed a $1,500 penalty against the taxpayer for making frivolous arguments and choosing "to ignore and/or not follow case precedent and interpretation of the statutory law."

Tornichio v. Commissioner, T.C. Memo. 2002-291, 84 T.C.M. (CCH) 578, 582 (2002) – the court imposed a $12,500 penalty against the taxpayer for making frivolous arguments, stating "[f]ederal courts have unequivocally rejected his protester arguments and sanctioned him for raising them."

Davich v. Commissioner, T.C. Memo. 2002-255, 84 T.C.M. (CCH) 429, 435 (2002) – the court imposed a $5,000 penalty against the taxpayer case, stating "it is clear that [the taxpayer] regards this proceeding as nothing but a vehicle to protest the tax laws of this country and to espouse his own misguided views, which we regard as frivolous and groundless."

Davidson v. Commissioner, T.C. Memo. 2002-194, 84 T.C.M. (CCH) 156, 160-61 (2002) – the court imposed a $4,000 penalty for raising groundless arguments noting that "[d]uring the administrative hearing, petitioner was provided with a copy of the Court's opinion in Pierson v. Commissioner [115 T.C. 576, 581 (2000)]. . . and was warned that his arguments were frivolous."

Davis v. Commissioner, T.C. Memo. 2001-87, 81 T.C.M. (CCH) 1503 (2001) – after warning that the taxpayer could be penalized for presenting frivolous and groundless arguments, the court imposed a $4,000 penalty.

Pierson v. Commissioner, 115 T.C. 576, 581 (2000) - the court considered imposing sanctions against the taxpayer, but decided against doing so, stating, "we regard this case as fair warning to those taxpayers who, in the future, institute or maintain a lien or levy action primarily for delay or whose position in such a proceeding is frivolous or groundless."

Sanctions Imposed Against Taxpayer's Counsel:

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the taxpayer's argument that income received from sources within the United States is not taxable income stating that "[t]he 861 argument is contrary to established law and, for that reason, frivolous." The court imposed sanctions against the taxpayer in the amount of $15,000, as well as sanctions against the taxpayer's attorney in the amount of $10,500, for making such groundless arguments.

The Nis Family Trust v. Commissioner, 115 T.C. 523, 545-46 (2000) – concluding that the petitioners chose "to pursue a strategy of noncooperation and delay, undertaken behind a smokescreen of frivolous tax-protester arguments," the court imposed a $25,000 penalty against them, and also imposed sanctions of more than $10,600 against their attorney for arguing frivolous positions in bad faith.

Edwards v. Commissioner, T.C. Memo. 2002-169, 84 T.C.M. (CCH) 24, 42 (2002) – the court found that sanctions were appropriate against both the taxpayer and the taxpayer's attorney for making groundless arguments. The court stated that "[a]n attorney cannot advance frivolous arguments to this Court with impunity, even if those arguments were initially developed by the client." In

a supplemental opinion, the court imposed sanctions against the taxpayer in the amount of $24,000 and against the taxpayer's attorney in the amount of $13,050. Edwards v. Commissioner, T.C. Memo. 2003-149, 85 T.C.M. (CCH) 1357.

Exhibit C

T.C. Memo. 2004-169

UNITED STATES TAX COURT

ROBERT C. MCKEE AND VALERY W. MCKEE, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent*

Docket No. 4036-03. Filed July 19, 2004.

Donald L. Feurzeig, for petitioners.

Charlotte Mitchell, for respondent.

SUPPLEMENTAL MEMORANDUM OPINION

MARVEL, Judge: On June 3, 2004, pursuant to Rule 161,[1] petitioners filed a timely motion for reconsideration of this

*This opinion supplements our previously filed opinion in McKee v. Commissioner, T.C. Memo. 2004-115.

[1]All section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Court's Memorandum Opinion in McKee v. Commissioner, T.C. Memo. 2004-115 (McKee I). In McKee I, we denied petitioners' motion for reasonable litigation costs because respondent's position in the answer was substantially justified and petitioners were not the prevailing party. See sec. 7430(c)(4)(B)(i). In their motion, petitioners allege that this Court "committed substantial errors that were material to the decision in * * * [McKee I]." This Supplemental Memorandum Opinion addresses petitioners' allegations of error.

Background

We adopt the findings of fact in our prior Memorandum Opinion, McKee I. For convenience and clarity, we repeat below the facts necessary for the disposition of this motion.

In a letter to respondent dated August 9, 2002, on behalf of petitioners, Roland Potter, C.P.A., addressed certain proposed adjustments to petitioners' income tax. Mr. Potter did not enclose any documents with the letter.

In a notice of deficiency dated March 10, 2003, respondent determined deficiencies in petitioners' income tax for the taxable years 1999, 2000, and 2001. After petitioners and respondent filed with this Court a petition and an answer, respectively, respondent held an Appeals Office conference with petitioners' representative. According to Appeals Officer Melvin M. Chinen, the two main issues in the case were: (1) Whether

petitioner Robert C. McKee was a dealer in real estate whose sales of undeveloped ranch property parcels would be taxed as ordinary income; and (2) whether certain losses petitioners claimed are limited under sections 1366(d), 465, and 469. As a result of the Appeals Office conference, the parties reached a settlement. In resolving the dealer in real estate issue, pursuant to petitioners' offer, the parties agreed to treat 50 percent of the parcel sales as sales of dealer property, subject to ordinary income tax, and the other 50 percent as sales giving rise to capital gains.

Discussion

Reconsideration under Rule 161 is intended to correct substantial errors of fact or law and allow the introduction of newly discovered evidence that the moving party could not have introduced, by the exercise of due diligence, in the prior proceeding. Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998). This Court has discretion to grant a motion for reconsideration and will not do so unless the moving party shows unusual circumstances or substantial error. Id.; see also Vaughn v. Commissioner, 87 T.C. 164, 166-167 (1986). "Reconsideration is not the appropriate forum for rehashing previously rejected legal arguments or tendering new legal theories to reach the end result desired by the moving party." Estate of Quick v. Commissioner, supra at 441-442.

In their motion for reconsideration, petitioners assert that, (1) contrary to our conclusion in McKee I, they had provided to respondent all relevant information under their control, and (2) our determination that respondent's position had a reasonable basis in both fact and law failed to consider respondent's position with respect to a proposed increase in tax under section 453(l)(3).[2] In response, respondent contends that petitioners' allegations of error are not based on new evidence and merely restate and elaborate upon arguments petitioners made in McKee I.

A. Presentation of Relevant Information

In McKee I, we stated:

> The only information petitioners had provided before respondent filed the answer was the information contained in Mr. Potter's letter. In the letter, Mr. Potter set forth petitioners' disagreements with respondent's proposed adjustment but included no supporting documents or other proof of his assertions. Respondent was not required to concede the case on the basis of Mr. Potter's letter alone. * * *

Petitioners allege that "the Court was in error in requiring documents in Petitioners' possession when Respondent possessed

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[2]Sec. 453(l) defines dealer dispositions of property for purposes of reporting income from installment sales. Sec. 453(l)(3) provides that, for installment obligations regarding timeshares and residential lots as described in sec. 453(l)(2)(B), the tax on payments received pursuant to the obligations is increased by the amount of interest determined under sec. 453(l)(3)(B). Carlson v. Commissioner, 112 T.C. 240, 242-243 (1999).

all of Athgarvan's[3] tax returns." According to petitioners, there were no other relevant supporting documents under their control.

Although the tax returns reported Athgarvan's income for the relevant taxable years, the tax returns were not indisputable evidence of that income. Indeed, an audit of a taxpayer's return is an attempt to ascertain the veracity of the statements made on the return. Respondent was not required to accept Athgarvan's tax returns as fact and concede the case on that basis. Consequently, we find no error in our conclusion in McKee I that petitioners failed to provide all relevant information under their control on or before the date respondent filed the answer.

B. Reasonableness of Respondent's Position in the Answer

Petitioners' second allegation of error involves our conclusion regarding the reasonableness of respondent's position on the dealer in real estate issue. In McKee I, we observed that "The dealer in real estate issue was a close factual issue, as evidenced by its 50/50 settlement." Petitioners contend, however, that respondent actually conceded about 88 percent of the dealer in real estate issue because of concessions of adjustments under section 453(l)(3). Petitioners argue that this

[3]Athgarvan Enterprises, Inc., was petitioners' S corporation.

Court ignored the conceded section 453(l)(3) adjustments in determining the reasonableness of respondent's position.

To the contrary, this Court thoroughly considered respondent's position on the dealer in real estate issue. Respondent's concession of adjustments under section 453(l)(3) flowed directly from the parties' agreement to treat petitioner Robert C. McKee as a dealer in real estate with respect to only 50 percent of the parcel sales. Moreover, even if respondent settled 88 percent of the total adjustments related to the dealer in real estate issue in favor of petitioners, that settlement would establish only that petitioners substantially prevailed with respect to the dealer in real estate issue. See Bowden v. Commissioner, T.C. Memo. 1999-30. Whether petitioners substantially prevailed does not affect our determination that respondent's position was substantially justified. See sec. 7430(c)(4)(A)(i) and (B)(i).

C. Conclusion

We have considered petitioners' remaining arguments and, to the extent not discussed above, find those arguments to be irrelevant, moot, or without merit.

Petitioners have failed to demonstrate unusual circumstances or substantial errors of fact or law. Accordingly, we will deny petitioners' motion for reconsideration.

To reflect the foregoing,

An appropriate order will be issued.

ROBERT C. MCKEE v. COMMISSIONER OF INTERNAL REVENUE No. 04-74846
IRS No. 4036-03

On December 4, 2006, the 9th Circuit reversed the United States Tax Court on whether litigation costs involving the IRS making a claim that was 3 times what they were actually owed was the liability of the McKee family to suffer. An added penalty so to speak.

It is a short read but the sum of it is the Tax Court held the IRS was not liable for their calculation blunders on the basis that the Tax Court, in its discretion, claimed the regulations written by the IRS and codes were so complex that the IRS could not be held liable for its failure to understand them. The 9th Circuit reversed. The Commissioner of the Internal Revenue asked the 9th Circuit not to make the decision public.

And now you have it. No matter what they do with it, you have a copy of it and the Commissioner is bound by the decision. Imagine, the taxpayer claiming mistake because the statutes and regulations were so complex and the IRS rejecting that and seeking penalties for failure to measure up.

This decision and the Tax Court abuse of discretion show that the Tax Court is not a Court at all but a place where the complexity can be filtered to the benefit of the IRS. I do not mind the Government having the benefit when the law supports their claim but when the law is basically written by them and they claim it is so complicated they cannot be held liable for their mistakes, and they deal with it every day for their job, what does that say about the rest of America?

It is so complicated. The IRS cannot comply with their own regulations nor even understand what they say. Add this to the Paperwork Reduction Act of 1995 duties upon them and it is like having this in living proof.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 04 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ROBERT C. MCKEE; et al.,
Petitioners - Appellants,
V.
COMMISSIONER OF INTERNALÂ REVENUE,
Respondent - Appellee.

No. 04-74846
IRS No. 4036-03
MEMORANDUM*

Appeal from a Decision of the Internal Revenue Service

Argued and Submitted November 16, 2006
San Francisco, California

Before: KLEINFELD and THOMAS, Circuit Judges, and LEIGHTON**,
DistrictÂ Judge.

The IRS assessed a tax deficiency of $164,765 upon the McKees for tax years 1999-2000. After negotiations in which the IRS acknowledged key errors

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* -This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.
** -The Honorable Ronald B. Leighton, United States istrict Judge for the Western District of Washington, sitting by designation.

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were made in calculating that figure, a settlement was reached in which the deficiency was reduced to

$44,535. The McKees petitioned for reasonable litigation costs under 26 U.S.C. Â§ 7430, but were denied by the Tax Court.Because we find that the Tax Court abused its discretion in finding that the position of the IRS was "substantially justified" we reverse the Tax Court andÂ grant the McKees's petition.

The IRS bears the burden of proving that its position in the proceedings below was "substantially justified." In the settlement negotiations, the IRSÂ admitted that it made errors in applying its own code and regulations. The Tax Court's finding that the IRS was excused because its own regulations were "complex" was an abuse of discretion.

The settlement resulted in a net reduction in the deficiency by 73%. Thus the McKees "substantially prevailed" with respect to the total amount in

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1 -Â 26 USCS § 7430(c)(4)(B) .

controversy. 2 Under IRS regulations, the McKees are excused from further exhaustion of remedies. 3

We remand to the Tax Court for an award to the McKees of $31,078.28,their reasonable litigation costs under the Internal Revenue Code. 4

PETITION GRANTED. The decision of the Tax Court is REVERSED andÂ REMANDED.

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2 -Â See 26 USCS § 7430(c)(4)(A) (i).
3 -Â See CFR § 301.7430-1(g) example 5.
4 -Â See 26 USCS § 7430.