

**FILED**

**APR 17 2006**

**WILLIAM B. GUTHRIE**  
Clerk, U.S. DISTRICT COURT

By \_\_\_\_\_  
Deputy Clerk

**District Court of the United States  
In and for the  
Eastern District of Oklahoma**

<b>United States of America</b>	)	<b>Judge White</b>
<b>Plaintiff</b>	)	
<b>v.</b>	)	<b>CASE NO. CR 05-43 WH</b>
	)	
<b>Jimmy C Chisum</b>	)	<b>Motion for finding of facts and</b>
<b>Accused Pro Per</b>	)	<b>conclusions of law on all</b>
	)	<b>Motions deemed frivolous or</b>
	)	<b>Dismissed AND FOR</b>
	)	<b>CERTIFIED DECISIONS</b>
	)	

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**ACCUSED'S MOTION for finding of facts and conclusions of law on all the  
Motions deemed frivolous and/or in Pre trial Motions and for certification of  
the decisions on all motions.**

Comes now the accused, a living man, in his proper person, to move the court in its Article III judicial capacity, under oath, for finding of fact and conclusions of law on each, every, and all the motions that were deemed and ruled as frivolous, not well taken or dismissed throughout the procedures in the case.

1. Express and specific jurisdictional facts and conclusions of law for subject matter jurisdiction;
2. Express and specific facts and conclusions as to Nature and cause;
3. Facts found in the record of an assessment or deficiency;
4. Facts in the record and conclusions reached by the court to waive the essential elements of assessment and deficiency for the charge;
5. Statute or code expressly imposing liability upon defendant;
6. Specific Statute and code making defendant subject to the assessed tax on Chadsey;

7. Constitutional or Statutory provision establishing Duty of defendant to plaintiff;
8. Findings of facts and conclusions to determine that defendant was “just wrong” in his beliefs about jurisdiction, and law;
9. Facts and conclusions for standing of the plaintiff in the court;
10. Facts and conclusions creating the representative relationship between plaintiff and plaintiff council;
11. plaintiff identity and right to sue and be sued in the District Court of the United States at Article III;
12. The specific standing of plaintiff to be an injured party; and
13. The particular injury to plaintiff established by facts and law upon the record.

**Whereas this honorable court** has established its own precedent for providing finding of facts and conclusions in that it provided to defendant the West Law printout for 28 USC 636 in an effort to explain or establish its finding of facts and conclusions of law supporting the conclusion the Magistrates have authority never delegated by congress and the court’s failure to act on jurisdictional defect in arraignment; and

***McNally v. U.S., 483 U.S. 350, 371-372 (1987), Quoting U.S. v Holzer, 816 F.2d. 304, 307: ““Fraud in its elementary common law sense of deceit - and this is one of the meanings that fraud bears in the statute, see United States v. Dial, 757 F.2d 163, 168 (7th Cir. 1985) - includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them he is guilty of fraud. When a judge is busily soliciting loans from counsel to one party, and not telling the opposing counsel (let alone the public), he is concealing material information in violation of his fiduciary obligations.”***

**Whereas his honor** is a public official with fiduciary duties to the defendant; and

**Whereas this honorable court** has declared itself and his honor an Article III court and judge in its consumer information on the web site; it can not then be acting legislatively or administratively as a mere territorial court without forsaking its honorable commission, its limitations, its oath, and abandoning its office in consumer fraud; and

**Whereas the separation of powers** doctrine prohibits this honorable court from acting outside the Article III judicial powers expressly delegated in the U.S. Constitution

**Therefore** accused believes the court was simply in error and that the decisions of the Supreme Court Cases cited and the statutes provided are not frivolous; 10<sup>th</sup> Circuit's Collins decision did not overturn any of the cited Supreme Court decisions cited by defendant, repeal or amend any provisions of the constitutions, or declare any cited Case or statute in error.

**However**, even assuming that Collins was properly decided the question before the court in Collins was limited to the status of Attorney Dickstein; and the circuit noted that Dickstein's motions were unsupported. The distinct difference is that all of this defendant's motions were supported by statutory law and Supreme Court precedent; some of which post dated Collins. Thus Collins could not have overturned decisions not yet made; and where the Supreme Court carried through with the same doctrine and logic it seems obvious the Supreme Court did not get the word that their precedents had been overturned in Collins.

### **CONCLUSION**

The accused humbly stands before almighty God, who granted us liberty in our creation, needing to know that he does good and right in the sight of God, and man. If, as the court said, Accused is "just wrong" about the words and meanings in constitutions,

statutes, codes, regulations and court citations it is defendant's right, desire, and need to know the truth, that the truth can set him free, and therefore moves the court to be patient, honorable, deliberate and kind in properly informing him of his error so that accused may repent quickly and be righteous before God. If Accused so frivolously misunderstands the words of man for carrying out the just needs of the people; he is at great risk of misunderstanding God, and risking eternal judgment. Please help me know the truth.

### **ARGUMENT FOR RELIEF by Affidavit**

It is a sincerely held belief that the liberties granted by almighty God do not include unjust government, or any deviation from truth. Involuntary servitude was abolished by God in his perfect law of liberty and in America by the 13<sup>th</sup> Amendment during the War between the States called the Civil War. God's law would never approve of an involuntary tax for the murder of babies in the womb.

When the Supreme Court res judicata and stare decisis become treated as or called frivolous, BY INFERIOR COURTS, the people have a right to know why, how, when, by whom, and where. All jurisdiction claims require what law imposed the duty, when, who, how, why, where, and under what authority. To establish plaintiff's standing before the court requires specific facts in the record, and law on the books.

In the creation of the Federal and state constitutions, by we the people grateful to almighty God for our liberties, for the first time in history, the people reserved to themselves a peaceful means of redress against runaway government administrators; or unconstitutional acts by congress, or even unjust courts.

Sadly, for the people, it appears the three separate but equal branches of our servant government have chosen to conspire to escape the secure confines of limited

authority in the constitutions; or been taken over by fraudulent tyrants in a mere territorial jurisdiction, foreign to the constitution and the states, operating under exclusive legislation outside the limited Constitutional bounds. Is it just for love of money?

The plaintiff has not provided the court or defendant with the Supreme Court ruling(s) that overturned any relevant portion, concerning the 16<sup>th</sup> Amendment and the Constitution, of the following cases:

U S v. WHITRIDGE, 231 U.S. 144, 147 (1913),

MERCHANTS' LOAN & TRUST CO. v SMIETANKA, 255 US 509, 519 (1921),

STRATTON'S INDEPENDENCE, LTD. v HOWBERT, 231 US 399, 417 (1913),

EVANS v GORE, 253 US 245, 263 (1920),

STANTON v BALTIC MINING CO., 240 US 103, 112 -114 (1916),

*"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16<sup>th</sup> Amendment conferred no new power of taxation.."*

BRUSHABER v UNION PACIFIC R. CO., 240 US 1, 12 (1916),

*"The court, fully recognizing in the passage which we have previously quoted the all embracing character of the two great classifications, including, on the one hand, direct taxes subject to apportionment, and on the other, excises, duties, and imposts subject to uniformity, held the law to be unconstitutional in substance for these reasons: Concluding that the classification of direct was adopted for the purpose of rendering it impossible to burden by taxation accumulations of property, real or personal, except subject to the regulation of apportionment..."*

*"...the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source..."*

PECK v LOWE, 247 US 165, 172 (1918),

EISNER v MACOMBER, 252 US 189, 205 – 207 (1920),

DOYLE v. MITCHELL BROS., 247 U.S. 179, at 183, at 185 (1918),

*"Whatever difficulty there may be about a precise and scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."*

BOWERS v. KERBAUGH-EMPIRE, 271 U.S. 170, 174 (1926),

*"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived' without apportionment among the several states, and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power."*

HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F2d 575 (1943),

SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330, 335 (1918),

KNOWLTON vs. MOORE, 178 US 41, 47 (1900),  
BUTCHER'S UNION CO. vs. CRESENT CITY CO., 111 US 746, 756 (1884),  
MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct  
at 875; 87 L Ed at 1298 (1943),  
POLLOCK, 157 US 429, at 556, at 573, at 582, and at 436 - 441 (1895)  
FLINT v. STONE TRACY CO., 220 U.S. 107, at 161, at 165 (1911),  
COPPAGE v. STATE OF KANSAS, 236 U.S. 1, 23 -24 (1915),  
TRUAX v. CORRIGAN, 257 U.S. 312, 348 (1921),  
MEYER v. STATE OF NEBRASKA, 262 U.S. 390 (1923),  
SIMS v. AHRENS, 167 Ark. 557, 271 S.W. 720, at 730 - 733 (1925),  
**"[T]he Legislature has no power to declare as a privilege and tax for revenue  
purposes occupations that are of common right, but it does have the power to  
declare as privileges and tax as such for state revenue purposes those pursuits  
and occupations that are not matters of common right..."**  
TAFT v. BOWERS, 278 U.S. 470, 481 (1929),  
REDFIELD v. FISHER, 135 Or. 180, 292 P. 813, 819 (Ore. 1930),  
JEROME H. SHEIP CO. v. AMOS, 100 Fla. 863, 130 So. 699, 705 (1930),  
JACK COLE CO. v. MACFARLAND, 337 S.W.2d 453, 455-56 (Tenn. 1960),  
***"Realizing and receiving income or earnings is not a privilege that can be taxed."  
"Since the right to receive income or earnings is a right belonging to every  
person, this right cannot be taxed as a privilege."***

For more than 20 years defendant has sought to do right before God and man and repeatedly asked for truth from IRS agents and officers to set him free of any confusion or misunderstanding of the law; and for all that time public servants under oath to serve the just needs of the governed have summarily denied defendant any peaceful redress, due process, or answers to help (just as the court did in pretrial and Motions). No government servant has served this defendant's just needs with verifiable truth of law that makes him liable for and subject to taxes that can violate the constitutional provisions for his free exercise of religion. Taxes for the murder of babies and other violations of God's Law are repugnant to the free exercise clause of the First Amendment. (Blackstone)

**Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L. Ed. 2d (1976) "Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."**

**"Examination of the way the term "defraud" has long been defined, and was defined at the time of the statute's enactment, makes it clear that Congress' use of the term showed no intent to limit the statute to property loss. Cf. Saint Francis College v. Al-Khazraji, 481 U.S. 604 (1987) (looking to contemporaneous dictionary definitions in construing the word "race"). For example, Justice Story cites the definition of "fraud" as "applied to every artifice made use of by one person for the purpose of deceiving another," or as "any cunning, deception, or artifice used to circumvent cheat, or deceive another." 1 J. Story, Equity Jurisprudence 186, pp. 189-190 (1870). Similarly, the law dictionaries of the era broadly defined the type of interests subject to deprivation by fraudulent action. One leading dictionary stated that "[t]o defraud is to withhold from another that which is justly due to him, or to deprive him of a right by deception or artifice." 1 Bouvier's Law Dictionary 530 (1897). Another dictionary defined "defraud" as "[t]o cheat; to deceive; to deprive of a right by an act of fraud . . . to withhold from another what is justly due him, or to deprive him of a right, by deception or artifice." W. Anderson, A Dictionary of Law 474 (1893). See also 1 Burrill's Law Dictionary 658-659 (1859)." McNally v. United States, 483 U.S. 350, 371 (1987).**

When or if the simple words in the decisions of the Supreme Court become frivolous the constitutional guarantee of peaceful redress is subverted or lost completely; and the constitutional design for balance of powers is abrogated. This honorable court has the duty, responsibility, and opportunity to be part of the solution and not part of the problem of runaway government. One honorable court can change all of justice.

**"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.**

In formation of the Magna Carta it was necessary, for the patriots, to hold a knife to the King's throat; but in America it is only necessary to bind the three branches of government equally to the limitations of the constitution by oath and rule of law; because we established for the first time the right of the people to peacefully redress our government for grievance. That first amendment right is regularly refused by IRS.

**BREWER v. U.S., Cite as 764 F.Supp. 309 (S.D.N.Y. 1991):** “...*However, there is no indication in the record before us that the "Summary Report of Assessments", known as Form 23C, was completed and signed by the assessment officer as required by 26 CFR § 301.6203-1.3 Nor do the Certificates of Assessments and Payments contain 23C dates which would allow us to conclude that a Form 23C form was signed on that date. See United States v. Dixon, 672 F. Supp. 503, 505-506 (M.D.Ala.1987). Thus we find that the plaintiff has raised a factual question concerning whether IRS procedures were followed in making the assessments...*”

*“This regulation provides, in relevant part, that “[t]he assessment shall be made by an assessment officer signing the summary record of assessment...”*

Leading to the Declaration of Independence and Revolution there was no peaceful means of redress; but in our constitutional system of limited, expressly delegated and carefully balanced powers, among the three branches, binding all branches equally to the constitution, protects the rights of the people from abuses by any branch.

**“The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other. The charges in the information are founded on 1304 and its accompanying regulations, and the information was dismissed solely because its allegations did not state an offense under 1304, as amplified by the regulations. When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute.”** UNITED STATES v. MERSKY, 361 U.S. 431

United States v. Wayte, 549 F.Supp. 1376, 1385 (C.D.Cal. 1982) (**“the defendant’s argument that the court should view the applicable statute, regulations and proclamation as one statutory scheme is well founded”**).

**“Under the Act, the Secretary of the Treasury is authorized to prescribe by regulation certain recordkeeping and reporting requirements for banks and other financial institutions in this country. Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act’s civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.”** CALIFORNIA BANKERS ASSN. V. SHULTZ, 416 U.S. 21 (1974).

**“Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid,”**

Spreckels Sugar Refining Company v. McClain, 192 U.S. 397, 416, 1904.

Either constitutional limitations apply to all branches equally or we have seen the death of constitutional government, rights, and peace.



**GOULD v. GOULD , 245 U.S. 151 (1917): "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen. United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; American Net & Twine Co. v. Worthington, 141 U.S. 468, 474 , 12 S. Sup. Ct. 55; Benziger v. United States, 192 U.S. 38, 55 , 24 S. Sup. Ct. 189."**

Defendant prays to Almighty God, the source of all our liberties, and all honorable and just laws, that we have not come to a place in my America where Accused is denied peaceful redress of government, or where any agency, de jure or de facto can ignore due process, steal jurisdiction at the point of a gun, through denial of due process, lies, or fraud upon the courts, and have prejudicial treatment to the detriment of the constitutions and laws.

***Fraud: "Deceit, deception, artifice, or trickery operating prejudicially on the rights of another, and so intended, by inducing him to part with property or surrender some legal right. 23 Am J2d Fraud § 2. Anything calculated to deceive another to his prejudice and accomplishing the purpose, whether it be an act, a word, silence, the suppression of the truth, or other device contrary to the plain rules of common honesty. 23 Am J2d Fraud § 2. An affirmation of a fact rather than a promise or statement of intent to do something in the future.***  
McInnes v Sutliff, 241 111 521, 89 NE 651."

Note: "In the 1970s and 1980s, federal prosecutors were allowed to extend the mail and wire fraud statutes to "schemes to defraud ... designed to deprive individuals, the people, or the government of intangible rights, such as the right to have public officials perform their duties honestly." See McNally v. United States, 483 U.S. 350, 358 (1987).

Given with knowledge of the penalties of perjury 12 April, 2006; 28 USC 1746



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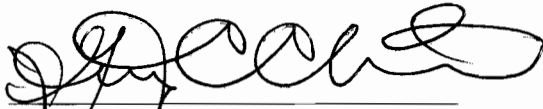
Jimmy C. Chisum, living soul

### **RELIEF SOUGHT**

**Wherefore Defendant moves** the court for finding of facts and conclusions of law to enable defendant to know the truth that the truth may set him free of any error under first amendment principles of redress and free exercise of accused's religion.

1. Express and specific jurisdictional facts and conclusions of law for subject matter jurisdiction;
2. Express and specific facts and conclusions as to Nature and cause;
3. Facts found in the record of an assessment or deficiency;
4. Facts in the record and conclusions reached by the court to waive the essential elements of assessment and deficiency for the charge;
5. Statute or code expressly imposing liability upon defendant;
6. Specific Statute and code making defendant subject to the assessed tax on Chadsey;
7. Constitutional or Statutory provision establishing Duty of defendant to plaintiff;
8. Findings of facts and conclusions to determine that defendant was “just wrong” in his beliefs about jurisdiction, and law;
9. Facts and conclusions for standing of the plaintiff in the court;
10. Facts and conclusions creating the representative relationship between plaintiff and plaintiff council;
11. Plaintiff identity and right to sue and be sued, or bring criminal charges in the District Court of the United States at Article III;
12. The specific standing of plaintiff to be an injured party; and
13. The particular injury to plaintiff established by facts and law upon the record.


Respectfully submitted this 12<sup>th</sup> day of April, 2006 AD; all rights reserved.

A handwritten signature in black ink, appearing to read 'Jimmy C. Chisum', written over a horizontal line.

Jimmy C. Chisum, sui juris

Certificate of service

Defendant hereby certifies that he has delivered a copy of the Motion for finding of facts and conclusions of law on all motions deemed frivolous or dismissed and for certified decisions to the Plaintiff by First Class mail, postage paid and addressed to Jeffrey Gallant, US Attorney, 1200 W. Okmulgee, Muskogee, Oklahoma, 74401 on 12 April, 2006 AD.



Jimmy C. Chisum, Propria Persona

## CITES BY TOPIC: 23C Assessment Certificate

### Sample IRS 23C Summary Record of Assessments:

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#### Botta v. Scanlon, 288 F.2d 504, 508 (1961):

*"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..."*

*Botta v. Scanlon, 288 F.2d. 504, 508 (1961)*

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#### 2003 IRS Published Products Catalog, Document 7130, p. F-4

##### **Assessment Certificate-Summary Record of Assessments**

Form 23-C is used to officially assess tax liabilities. The completed form is retained in the service center case file as a legal document to support the assessment made against a taxpayer.

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#### Internal Revenue Manual (IRM) Section 3.17.63.14.7: Account 6120 Individual Income Tax Assessments [Form 1040]

3.17.63.14.7 (10-01-2003)

##### Account 6120 Individual Income Tax Assessments—Principal

1. This account is used to summarize the total amounts of assessments of tax class 2 **Principal** as provided by the Internal Revenue Code. The balance of this account represents total tax class 2 **principal** assessments for the year.
  2. **All principal assessments must be recorded on Summary Record of Assessments (Assessment Certificate [IRS Form 23C]). The Assessment Certificate is the legal document that permits collection activity.**
  3. Total tax class 2 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.
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#### 26 CFR 301.6203-1: Method of Assessment:

**Title 26: Internal Revenue**

PART 301—PROCEDURE AND ADMINISTRATION

Assessment

In General

§ 301.6203-1 Method of assessment.

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. **The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.**

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**Curley v. U.S., 791 F. Supp 52 (E.D.N.Y. 1992):**

*“... [5] Plaintiff relies heavily on Brafman v. United States, 384 F.2d 863 (5<sup>th</sup> Cir. 1967), where an assessment was invalidated due to the lack of a signature on the 23C Form. This defect, however, was a significant violation of the regulation...*

*...A signature requirement protects the taxpayer by ensuring that a responsible officer has approved the assessment...” [Curley v. U.S., 791 F. Supp 52 (E.D.N.Y. 1992)]*

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**Brewer v. U.S., 764 F.Supp. 309 (S.D.N.Y. 1991):**

*“...However, there is no indication in the record before us that the ‘Summary Report of Assessments’, known as Form 23C, was completed and signed by the assessment officer as required by 26 CFR § 301.6203-1.3 Nor do the Certificates of Assessments and Payments contain 23C*

*dates which would allow us to conclude that a Form 23C form was signed on that date. See United States v. Dixon, 672 F. Supp. 503, 505-506 (M.D.Ala. 1987). Thus we find that the plaintiff has raised a factual question concerning whether IRS procedures were followed in making the assessments...*

*“3 This regulation provides, in relevant part, that “[t]he assessment shall be made by an assessment officer signing the summary record of assessment...” [Brewer v. U.S., 764 F.Supp. 309 (S.D.N.Y. 1991)]*

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**Brafman v. United States, 384 F.2d 863 (1967):**

“It appears that the requirement of the applicable Treasury Regulation—that an assessment officer sign the assessment certificate—is consistent with the literally mechanical procedure for recording of liability. The recordation is to be accomplished through “machine operations”, but the actual and final assessment step, that step which establishes a prima facie case of taxpayer liability, can be taken only with the approval of a responsible officer of the Internal Revenue Service. What is important in any case is that assessment is not automatic upon recordation; it requires the action of an assessment officer. That action, as defined explicitly in the Treasury Regulations, is the signing of the certificate.”

“As the district court said in *United States v. Lehigh*, W.D.Ark. 1961, 201 F.Supp. 224, 234, this is both true and immaterial:

“Any procedural defense is in a sense “technical.” The procedures set forth in the Internal Revenue Code were prescribed for the protection of both the Government and the taxpayer. Neglect to comply with those procedures may<sup>7</sup> entail consequences which the neglecting party must be prepared to face, whether such party be the taxpayer or the Government.

“Certainly the courts have not hesitated to enforce strictly the Code requirement that a taxpayer’s returns must be signed to be effective. Thus, unsigned returns, even with remittances, have been viewed as nullities from the standpoint of imposition of penalties and of commencement of the running of the statute of limitations. It has availed the taxpayer little that his failure to sign was inadvertent.”

“Finally, where state taxation is involved compliance with a statutory provision requiring an assessment list to be signed by the assessors is usually considered essential to the

validity of further proceedings.” 84 C.J.S. Taxation §473 (1954).

“Since the assessment certificate in this case was not signed by the proper official, as prescribed by the applicable Treasury Regulation, within the statutory period after the filing of the estate tax return, this suit for collection of any deficiency is barred by the statute of limitations.” [Brafman v. United States, 384 F.2d 863 (1967)]

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**Tax Procedure and Tax Fraud in a Nutshell, Patricia Morgan, 1999, West Group, ISBN 0-314-06586-5, p.189:**

Assessment of the tax is merely the recording of the liability of the taxpayer on an official list. I.R.C. §6203. Technically, assessment is accomplished by a designated assessment officer signing a form (Form 23-C Assessment Certificate) that reflects the taxpayer's name, identification number, the taxable period involved, and the nature and amount of the tax assessed. The date this form is signed is the date of assessment, and it triggers two new statutes of limitations: the Government has 60 days from the date of assessment in which to notify the taxpayer of the assessment and demand payment, and it has ten years from the date of assessment in which to collect the tax.

The Government may not begin enforced collection activities unless and until it has notified the taxpayer of the assessment and demanded payment. The Code directs the IRS to make the notice and demand "as soon as practicable" and in no event later than 60 days after the date of assessment. I.R.C. §6303(a). The notice is to be delivered to the taxpayer's residence or his usual place of business, or mailed to his "last known address." (for a discussion of the "last known address." issue under section 6212(b), see §6.2.6. The same principles apply in the notice and demand context.) The taxpayer usually is given ten days from the date of the notice and demand in which to pay the tax. In practice, the grace period is usually much longer than ten days because IRS computers are programmed to send a series of notices at intervals of three to five weeks warning the taxpayer that if payment is not made a Notice of Federal Tax lien may be filed and there may be a levy placed on the taxpayer's bank accounts, wages and other property.

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**Internal Revenue Manual, Section 11.3.13.9.4 (12-01-2003): Requests for 23C Assessment Records**

** Acrobat version of Internal Revenue Manual, Section 11.3.13.9.4 (12-01-2003): Requests for 23C Assessment Records**

1. To ascertain assessment information, requests may be made for the records used in campus processing of the taxpayer's accounts. These requests may contain language with one or more of the following phrases:
  - A. all my information in system of records 24.030
  - B. my 23C document
  - C. my summary record of assessment
  - D. copies of the Form 4340 prepared on me
  - E. my section 6203 information
  - F. the Summary Record of Assessment and all supporting documentation
  - G. my summary of account
  
2. **Occasionally, requesters submit FOIA requests for such material to be used in the context of IRS enforcement activities. Therefore, responses that merely advise the requester that " there is no Form 23C with your name on it" open the door for the requesters to make a claim that the IRS has not made a valid assessment when challenging a statutory notice of deficiency.**
3. **To ensure consistency of treatment, and to avoid misinterpretation of the FOIA response, Disclosure personnel should strictly follow this IRM subsection.**
4. Requests of the type listed above that are received in the field offices should be reviewed and compared to the E-DIMS database. If this is the first such request, the field should respond by providing a transcript of the account and written explanation of the information (Document 11734), where applicable. The response should clearly explain that the information contained in the transcript meets the legal requirement of IRC 6203 and is the equivalent of what was requested.
5. **The requester should also be informed, either by telephone contact or in the response letter, that if he/she insists on a Form 23C (or other information from the list in (1) above), that the request should be resubmitted to the appropriate campus. The address where the requester should submit the request must be provided.**
6. **Disclosure personnel can use the Document Locator Number (DLN) for the assessment transaction code to provide information regarding the campus that would have the responsive records.**
7. Field offices that receive subsequent requests for the same type of information (see subsection (1) above) from the same requester, will transfer the request to the appropriate campus as such requests are considered misdirected. Receipt of the subsequent request will be construed to indicate that the requester is now aware of the nature of the information available and still wants the specific product originally requested (Form 23C, Summary Record of Assessment, RACS -006). **Since the requester was originally directed to the campus for such products, the current request would be misdirected. Since there may be more than one assessment involved, or more than one tax year involved, it is possible that**



**more than one campus will have to be contacted.** Only the appropriate portion of the request should be sent to the appropriate campus.

**Note:**

**Beginning December 8, 2003, the Cincinnati Accounting function will house all historical files related to 23C records assessed by Brookhaven campus functions. The Brookhaven Disclosure office will still process requests for these historical records, so all requests for 23C records related to a Brookhaven campus assessment should still be transferred to the Brookhaven office for a response.**

8. The transfer procedures should be followed, and the contacted campus must accept the transfer. *See IRM 11.3.13.5.9.*
9. **When FOIA requests of the above type are received in the campuses, either by transfer or by direct submission from the requester, the Disclosure Officer will work the case and provide responsive records in accordance with the procedures listed in Exhibit 11.3.13-6.**
10. If in all contacts with the requester it appears that the requester does not understand the IRS procedures on assessments, Disclosure personnel will provide additional information as suggested in the sample paragraphs in Exhibit 11.3.13-7.
11. In all instances, careful wording of the responses (either on the telephone or in writing) to the requester must be used. Even though the Form 23C is rarely used, and there is generally no identifying information on either the signed RACS Automated Summary or the paper Form 23C, Disclosure personnel should avoid making statements like " there are no records responsive to your request."

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**Internal Revenue Manual, Exhibit 11.3.13-7: Response to Requests for 23C**

**Exhibit 11.3.13-7 (12-01-2003)  
Response to Requests for 23C**

It is unclear to us what records you are seeking. Your request appears to be based on your understanding that a signed assessment record would contain data about your specific and identifiable assessment(s). Such is not the case.

During processing at the IRS Campus, Summary Records of Assessment are automated listings of an entire day's or week's total amounts processed. They are listed by date, are signed by an authorized assessment officer, but **do not** contain data that would identify any individual taxpayer. This procedure is in accordance with Federal regulations and is effective in every IRS Campus.

In the rare instances when our automated systems cannot be used (e.g., during power failures or in jeopardy assessments), we do prepare a paper Form 23C, strictly as a backup system. However, even in these instances, the Form 23C is a summary of assessment amounts and thus lacks data specific to any particular person.

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