IN THE DISTRICT COURT of the UNITED STATES
EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, PLAINTIFF,	No. **CR05-00043-RAW**
vs.	DEFENDANT'S MOTION TO DISMISS for lack of personam jurisdiction, essential elements, Subject matter, entrapment.
Jimmy Clayton Chisum, Defendant, pro per	Release of Bond

I. MOTION TO DISMISS & AUTHORITIES.

1.1 COMES NOW, Defendant above named, seeking dismissal with prejudice on grounds that, **1**) personam jurisdiction is lacking, **2**) essential elements are lacking, **3**) entrapment, and **4**) due process. Plaintiff's assertion of personam jurisdiction under 26 USC in relation to compensation for services received by one with Defendant's political and [taxing] status, which proves him similarly situated to Co-Complainants to the attached 18 U.S.C. § 4 Complaint to Congress (**Exhibit A hereto**, *Myrland, et al. v. U.S. Dept. of Justice, et al.*, filed 12/28/05), is nonexistent.

The Memorandum found at "Tab #5" supports this motion and is incorporated by this reference as if fully restated herein. The term "as briefed" shall refer to those issues briefed in said Memorandum (hereinafter "Memo"). ***Any and all emphasis*** employed herein may be construed to have been added. Defendant has joined said Complaint in relation to certain Counts enumerated therein, and to individuals involved in this prosecution. (See **Exhibit B hereto**, Defendant's Affidavit of Joinder).

1.2 Defendant is charged with violations of 26 USC § 7201 (tax evasion), and 18 USC § 1 (aid and abet) in relation to alleged 26 USC liabilities incurred in the taxable years of 1997 through 2000 (4 yrs.) by Brian Chadsey. These charges were brought by individuals with all prior knowledge detailed in the Complaint to Congress joined by the Defendant. (*Myrland, supra*). This shows the Plaintiff to be entirely reliant upon this Court to uphold a standard under which the law remains off limits, even when mere protective orders shelter the taxman. See *Evans v. Gore*, 253 US 245, 249 (1920), to wit:

"The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the Federalist, No. 78, from which we excerpt the following:

> . . . 'The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, ***whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing***.'

At a later period John Marshall, whose rich experience as lawyer, legislator, and Chief Justice enabled him to speak as no one else could, tersely said (Debates Va. Conv. 1829-1831, pp. 616, 619):

> 'Advert, sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting; between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the exercise of these duties he should observe the utmost fairness. ***Need I press the necessity of this?*** Does not ***every man*** feel that his own personal security and the security of his property ***depends on that fairness***? ***The judicial department comes home in its effects to every man's fireside***: it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? ... ***I have always thought***, from my earliest youth till now, ***that the greatest scourge an angry Heaven ever inflicted*** upon an ungrateful and a sinning people ***was*** an ignorant, ***a corrupt***, or a dependent ***judiciary***.'

More recently the need for this independence was illustrated by Mr. Wilson, as the President, in the following admirable statement:

> '***It is also necessary*** that there should be a judiciary endowed with substantial and independent powers and ***secure against all corrupting*** or perverting ***influences***; secure, also, against the arbitrary authority of the administrative heads of the government.
>
> 'Indeed there is a sense in which it may be said that the whole efficacy and reality of constitutional government resides in its courts. Our definition of liberty is that it is the ***best practicable adjustment between the powers of the government and the privileges of the individual***.'
>
> '***Our courts are the balance wheel of our whole constitutional system***; and ours is the only constitutional system so balanced and controlled. Other constitutional systems lack complete poise and certainty of operation because they lack the support and interpretation of authoritative, undisputable courts of law. It is clear beyond all

> need of exposition that for the definite maintenance of constitutional understandings ***it is indispensable***, alike for the ***preservation of the liberty of the individual and for the preservation of the integrity of the powers of the government***, that there should be some nonpolitical forum in which those understandings can be impartially debated and determined. That forum our courts supply. ***There the individual may assert his rights; there the government must accept definition of its authority***. There the individual may challenge the legality of governmental action and have it adjudged by the test of fundamental principles, and that test the government must abide; there the government can check the too aggressive self-assertion of the individual and establish its power upon lines which all can comprehend and heed. ***The constitutional powers of the courts constitute the ultimate safeguard alike of individual privilege and of governmental prerogative***. It is in this sense that our judiciary is the balance wheel of our entire system; it is meant to maintain that nice adjustment between individual rights and governmental powers which constitutes political liberty.'
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> Constitutional Government in the United States, pp. 17, 142." [1]

1.3 A denial of the relief requested hereby requires that the Court proceed wholly unable to say the law reaches the Defendant as briefed, which violates not only the appearance of fairness doctrine, but Defendant's due process rights as well. (See 18 USC §§ 4, 242). (See *Offutt v. US*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); *Medina v. California*, 505 US 437, 464 (1992) (Blackmun, dissent) ("In matters of ethics, appearance and reality often converge as one.").[2]

1.4 Challenge to court's jurisdiction may be raised at any time, even for first time on appeal. (See *United States v Bustillos*, 31 F.3d 931 (CA10 1994)). In deciding pretrial motion to

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[1] See *Evans v. Gore*, 253 U.S. 245, 249, 40 S.Ct. 550, 551 (1920). See also *O'Donoghue v. United States*, 289 US 516, 532-34 (1933).

[2] See also *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) ("[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)(noting the importance of "preserv[ing] both the appearance and reality of fairness," which "'generat[es] the feeling, so important to a popular government, that justice has been done'") (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)). *Litkey v. US*, 510 US 540, 565 (1994))"; *Press-Enterprise Co. v. Superior Ct.*, 487 US 1, 9, 13 (1986); *Vasquez v. Hillery*, 474 US 254, 271 (1986); *Globe Newspaper Co. v. Superior Ct.*, 457 US 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 US 555, 595 (1980); *Marshall v. Jerrico*, 446 US 238, 242 (1980); *Estes v. Texas*, 381 US 532, 543 (1965) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way, "justice must satisfy the appearance of justice." *Offutt v. US*, 348 U.S. 11, 14."); *Kentucky v. Stincer*, 482 US 730, 751 (1987) (dissent); *Greenholtz v. Inmates of Nebraska Penal Complex*, 442 US 1 (1979) (dissent).

dismiss for lack of personal jurisdiction, District Court has procedural leeway and may determine motion on basis of affidavits alone, permit discovery in aid of motion, or conduct evidentiary hearing on merits. (See *Marine Midland Bank, N.A. v. Miller*, 664 F2d 899 (CA2 1981).

1.5 In the Texas mere territorial court a protective order issued against discussion of the law as briefed in its Memo under Issues A, B and C. (See Memo at pgs.17-25. Order is from *Jim L. Walden v. United States, et al.*, #A-**05**-CA-444-LY, U.S. Dist. Court in Austin, TX, judge Lee Yeakel, named in attached felony Complaint). Once challenged, proof of jurisdiction is a burden upon the party asserting it. [3] Lengthy excerpts herein are not intended to burden the Court but rather are to let higher authorities convey the cornerstones of Defendant's contentions and basis for the relief requested.

> "There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, ***any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt***." *United States v. Nelson*, 137 F.3d 1094, 1103 (9th Cir. 1998) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Because Orduno-Aguilera ***properly preserved this issue by making a motion for an acquittal after the close of all evidence***, this court's standard of review is the same as that of the district court's denial of that motion. *United States v. Bahena-Cardenas*, 70 F.3d 1071, 1072-73 (9th Cir. 1995)."
>
> "[4] . . . ***Because this fact is a necessary element of the statutory definition*** of anabolic steroids, which is in turn ***a necessary element of the offense, failure to offer this evidence resulted in insufficient evidence to sustain the jury's verdict***."

See *U.S. v. Orduno Aguilera*, No.98-50346 (CA9 filed 7/19/99). **Further** -

> "No rational trier of fact (a judge) could have found that this standard was met for Estrada. ***The record was barren of evidence that he participated*** in the conspiracy."

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[3] See *State of Rhode Island v. State of Massachusetts*, 37 US 709, 718 (1838); *KVOS v. Associated Press*, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936): "...[w]here the allegations...are challenged by the defendant in an appropriate manner, ***the plaintiff must support them by competent proof.***" See also *F & S Contr. Co. v. Jensen*, 337 F.2d 160, 161-162, (10th Cir.1963) ("***[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it.*** *City of Lauden, Okla. v. Chapman*, 257 F.2d 601 (10th Cir.); *McNutt v. General Motors Acceptance Corp.*, 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. Further more, statutes conferring jurisdiction . . . are to be strictly construed ***and doubts resolved against federal court's jurisdiction***. *Aetna Ins. Co. v. Chicago R.I. & P.R.R.*, 229 F.2d 584 (10th Cir.); *Hely v. Ratta*, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

> "[2] Even though Estrada initially denied living in the trailer, his denial was as consistent with non-participating knowledge of the crime as it was with complicity in the crime. ***When there is an innocent explanation for a defendant's conduct as well as one that suggests that the defendant was engaged in wrongdoing, the government must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that the latter explanation is the correct one***. In Estrada's case, the government produced no such evidence."

See *U.S. v. Estrada-Macias*, No.97-10115 (CA9 filed 7/12/2000). **Further** -

> "[2] The federal Constitution's Fifth Amendment right to due process and Sixth Amendment right to jury trial, made applicable to the states through the Fourteenth Amendment, ***require the prosecution to prove to a jury beyond a reasonable doubt every element of a crime***. (See *Sullivan v. Louisiana*, 508 U.S. 275, 277-278 (1993).)"

See *People v. Sengpadychith*, 26 Cal.4th 316 (2001). **Further** -

> "The United States Supreme Court held: "What the factfinder must determine to return a verdict of guilty is prescribed by the Due Process Clause. The prosecution bears the burden of proving all elements of the offense charged, [citations], ***and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements*** . . ." The United States Supreme Court has extended this right to constitutionally require that ***no jury instructions relieve the prosecution of the responsibility of proving each element beyond a reasonable doubt***. In *Carella v. California*, 491 U.S. 263, 265 (1989), the court held: "***Jury instructions relieving States of this burden*** [of proving each element of an offense beyond a reasonable doubt] ***violate a defendant's due process rights***. [Citations.] ***Such directions subvert the presumption of innocence accorded to accused persons and also invade the truth-finding task assigned solely to juries in criminal cases***."

See *People v. Avila*, 35 Cal.App.4th 642, 43 Cal.Rptr.2d 853 (1995). **Further** -

> "The Fifth Amendment to the United States Constitution guarantees that no one will be deprived of liberty without "due process of law," and the Sixth that, "***[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." We have held that these provisions require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt***. *Sullivan v. Louisiana*, 508 U.S. 275, 277-278 (1993). The right to have a jury make the ultimate determination of guilt has an impressive pedigree. *Blackstone* described "trial by jury" as requiring that the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbors. . . .

See *United States v. Gaudin*, 515 U.S. 506, 510 (1995)). Also see Memo at pgs.6 through 17 for authorities on interpretive guidelines and restrictions.

1.6 To impose the provisions of 26 USC in any way upon the Defendant's, or Brian Chadsey's compensation for services, to issue a summons, to assess, tax, levy, lien or otherwise, the Plaintiff must have a lawful basis under Issues A through D of the Memo (pgs.17-35), and not a mere protective order against Congress' mandate(s). Plaintiff must match Defendant to statutory language before it contacts him in any way.

> 26 USC § 7201 Attempt to evade or defeat tax.- Any person ***who willfully attempts*** in any manner ***to evade or defeat any tax imposed by this title*** or the payment thereof shall, in addition to other ***penalties provided by law***, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

1.7 "[I]mposed by this title" is not a *liability at the behest of a protective Order*; (Walden supra) it never will be, nor at the point of a gun through fear and coercion, yet this standard now stands as the Plaintiff's sole threat to Defendant's personal property and privacy. Authority originates from statute and here we see a void. (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)). The record is vacant of nay liability statute or properly promulgated regulation (Mersky; S. Ct).

Relating to "willfulness" and the standards by which it is determined and/or proven, the U.S. DOJ briefs it exactly like this; ***emphasis added***:

***Begin quote of DOJ/Groves' memorandum**.

> "At trial on the charge of conspiracy under 18 USC § 371, the United States will be required to introduce evidence supporting the conspiracy charge. In order to establish a violation of § 371 as a *Klein* conspiracy, the government must prove beyond a reasonable doubt the following:
>
> 1. An agreement between two or more people;
>
> 2. to defraud the United States; and,
>
> 3. the commission of an overt act in furtherance of the conspiracy by a member of the conspiracy; and,
>
> 4. dishonest or deceitful means were employed to accomplish the purpose of the agreement.

> See *U.S. v. Caldwell*, 989 F.2d 1056 (CA9 1993); *U.S. v. Penagos*, 823 F.2d 346, 348 (CA9 1987); *U.S. v. Klein*, 247 F.2d 908 (CA2 1957), cert. denied, 355 US 924 (1958).
>
> The fourth element outlined above is unique to the Ninth Circuit in *Klein*-type tax conspiracy prosecutions. In *Caldwell*, the Ninth Circuit found the district court's jury instructions deficient because the court did not tell the jurors they had to find that the defendant agreed to defraud the United States by "deceitful and dishonest means." *Caldwell*, 989 F.2d at 1060. The *Caldwell* panel held that the Supreme Court's use of the term "defraud" in § 371 must be limited to wrongs done by "deceit, craft or trickery, or at least by means that are dishonest." *Id.* at 1059 (citing *Hammerschmidt v. United States*, 265 F.2d 182, 188 (1924)).
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> The United States will also bear the burden of proof of the defendant's willfulness. Willfulness is a voluntary, intentional violation of a ***known legal duty***. *Cheek v. U.S.*, 498 US 192, 201 (1991). Proof of willfulness may be based totally on circumstantial evidence. *United States v. Poschwatta*, 829 F.2d 1477, 1483 (CA9 1987), cert. denied, 484 US 1064 (1988); Evidence that defendants were aware of their legal duty or were ***warned of the impropriety*** of their actions is appropriate circumstantial evidence. *United States v. Collocraft*, 876 F.2d 303, 305 (CA2 1989); *United States v. Dack*, 987 F.2d 1282, 1285 (CA7 1983)." [4]

***End quote of DOJ memorandum**.

The subject of the Plaintiff's case is a tax purportedly imposed on compensation for services earned by Brian and Mitzi Chadsey in the fifty freely associated compact states. If the Defendant had "a legal duty" it could simply be put on the record by stating the statute and regulation imposing the tax and the Plaintiff wouldn't need the court's protection or a protective Order in the form of the motions of lemine or as in Walden above. If Defendant had "a legal duty" the IRS would not have told him otherwise. Judicial Notice and the 1988 Quiet title DOJ and IRS agreed I had no filing requirement, or tax owed. The emotional outburst of AUSA Gallant, and the name calling stand as verification of the old parable; if a lawyer has the law on his side he pounds on the law; if he has the facts he pounds on the facts; when he has neither he pounds on the table, or in this case hides under the skirts of the court through lemine and fraud.

> "In their zeal to enforce the law, however, ***Government agents may not originate a criminal design, implant in an innocent person's mind*** the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. *Sorrells*, *supra*, at 442; *Sherman*, *supra*, at 372. ***Where the Government has induced an individual to break the law and the defense of entrapment is at issue***, as it

[4] See U.S.' "Motion for an inquiry into potential conflict of interest" **filed 1/5/05** in #02-0133 SOM-BMK, U.S. Dist. Court, Hawaii Division, by DOJ's Edward E. Groves.

> was in this case, ***the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act*** prior to first being approached by Government agents. *United States v. Whoie*, 288 U.S. App. D.C. 261, 263-264, 925 F.2d 1481, 1483-1484 (1991)." [5]

Prior to The Quiet Title and Plaintiff's notification to the Court of ZERO balance the Defendant had filed annual statements and the IRS concurred in their validity, convincing Defendant that he'd substantially complied with his 27+ lb. Tax Code and regulations. The Plaintiff's safe harbor Lemine, fraud, and in protective orders hides the fact that no consideration of the law stands as their guide against the property, or rights of the Defendant.

In all reality, 26 USC 7201 charges rest entirely upon Defendant's being willful and liable for a tax on the amounts alluded to as evidence in the Indictment. The indictment is vacant of a liability statute or regulation (Mersky) and the defect has been repeatedly protected by the court. I have a right to statutes clearly conveying a liability in language men of common intellect can comprehend (Lanier, Conolly) leaving no room for interpretation (Zander, S.Ct 2006).

Is the Plaintiff's claim for damages referring to the chapter 1 tax which is imposed solely through regulation? (See Issue B, C of Memo, compare 2 USC § 1(a) through (h)).

Is the Plaintiff's claim for damages referring to taxes imposed solely upon the taxable income of the residents of the U.S. Possessions? (See Issue C of Memo, compare 26 USC §§ 1402(b), 3121(e)).

The possibilities are thereby exhausted; which one is it? Is this where the Plaintiff refers the Court to U.S. Dist. Judge Lee Yeakel's protective order from *Walden*? And what about Issue D and its claim under 4 USC § 72? And how did 26 USC § 83 operate in Plaintiff's conclusions and allegations?

These queries frame the proof that there simply is no tax liability for those years. It likewise disposes of as frivolous the Plaintiff's use of the term "tax protestor organization" or "abusive tax shelter" for it is borne purely of the false presumption that the law imposes a tax as briefed. The Plaintiff's entire case is thereby and therefore void *ab initio*, mere evidence of 18 USC §§ 241 and 242 violations on the part of counsel as complained of in Defendant's Joinder. Is the law so void of relevance that the Court will simply turn its back on this plain and clearly troublesome set of protections? Really? The language is plain and not subject to interpretation.

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[5] See *Jacobson v. United States*, 503 U.S. 540, 548 (1992).

"This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. See *Agurs*, 427 U.S. at 108 ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure"). This is as it should be. ***Such disclosure will serve to justify trust in the prosecutor as***

> ***the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.***

Berger v. US, 295 U.S. 78, 88 (1935). ***And it will tend to preserve the criminal trial***, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. See *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Estes v. Texas*, 381 U.S. 532, 540 (1965); *United States v. Leon*, 468 U.S. 897, 900-901 (1984) (recognizing general goal of establishing "procedures under which criminal defendants are `acquitted or convicted ***on the basis of all the evidence which exposes the truth***'" (quoting *Alderman v. United States*, 394 U.S. 165, 175 (1969))). The prudence of the careful prosecutor should not therefore be discouraged." [6]

"Moreover, the Court's analysis reduces the significance of deliberate prosecutorial suppression of potentially exculpatory evidence to that merely of one of numerous factors that "may" be considered by a reviewing court. *Ante* at 683 (opinion of BLACKMUN, J.). This is not faithful to our statement in *Agurs* that "***[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable***." 427 U.S. at 106. ***Such suppression is far more serious than mere nondisclosure of evidence*** in which the defense has expressed no particular interest. ***A reviewing court should attach great significance to silence in the face of a specific request***, when responsive evidence is **later** shown to have been in the Government's possession. ***Such silence actively misleads in the same way as would an affirmative representation that exculpatory evidence does not exist when, in fact, it does*** (i.e., perjury) -- indeed, the two situations are aptly described as "***sides of a single coin***." Babcock, Fair Play: Evidence Favorable to an Accused and Effective Assistance of Counsel, 34 Stan.L.Rev. 1133, 1151 (1982)." [7]

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[6] See *Kyles v. Whitley*, 514 US 419, 439 (1995).

[7] See *US v. Bagley*, 473 US 667, 714 (1985). See *Id.*, at footnote 8, "at fn.8, lead opinion: "In fact, the *Brady* rule has its roots in a series of cases dealing with convictions based on the prosecution's knowing use of perjured testimony. In *Mooney v. Holohan*, 294 U.S. 103 (1935), the Court established the rule that the knowing use by a state prosecutor of perjured testimony to obtain a conviction, and the deliberate suppression of evidence that would have impeached and refuted the testimony, constitutes a denial of due process. The Court reasoned that "a deliberate deception of court and jury by the presentation of testimony known to be perjured" is inconsistent with "the rudimentary demands of justice." *Id.* at 112. The Court reaffirmed this principle in broader terms in *Pyle v. Kansas*, 317 U.S. 213 (1942), where it held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation."

"***Failure of government to obey the law cannot ever constitute "legitimate law enforcement activity***." [8]

"Past decisions of this Court demonstrate that ***the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial***, not the culpability of the prosecutor. In *Brady v. Maryland*, 373 U.S. 83 (1963), for example, the prosecutor failed to disclose an admission by a participant in the murder which corroborated the defendant's version of the crime. ***The Court held that a prosecutor's suppression of requested evidence*** -

> ***violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.***

Id. at 87. Applying this standard, the Court found the undisclosed admission to be relevant to punishment, and thus ordered that the defendant be resentenced. Since the admission was not material to guilt, however, the Court concluded that the trial itself complied with the requirements of due process despite the prosecutor's wrongful suppression. The Court thus recognized that the aim of due process "is not punishment of society for the misdeeds of the prosecutor, but ***avoidance of an unfair trial to the accused***." *Ibid.*

This principle was reaffirmed in *United States v. Agurs*, 427 U.S. 97 (1976). ***There we held that a prosecutor must disclose unrequested evidence which would create a reasonable doubt of guilt that did not otherwise exist***. Consistent with *Brady*, we focused not upon the prosecutor's failure to disclose, but upon the effect of nondisclosure on the trial:

Nor do we believe the constitutional obligation [to disclose unrequested information] is measured by the moral culpability, or willfulness, of the prosecutor. ***If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it***. Conversely, if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. If the suppression of the evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." [9]

"Our overriding concern in cases such as the one before us is ***the defendant's right to a fair trial. One of the most basic elements of fairness in a criminal trial is that available evidence tending to show innocence, as well as that tending to show guilt, be fully aired before the jury; more particularly, it is that the State in its zeal to convict a defendant not suppress evidence that might exonerate him***. See *Moore v. Illinois*, 408 U.S. 786, 810 (1972) (opinion of MARSHALL, J.). This fundamental notion of fairness does not pose any irreconcilable conflict for the prosecutor, for as the Court reminds us, the prosecutor "***must always be faithful to his client's overriding interest that `justice shall***

[8] See *Oregon v. Elstad*, 470 US 298, 362 (1985)(dissent).
[9] See *Smith v. Phillips*, 455 US 209, 219 (1982).

> ***be done***.'" *Ante* at 111. ***No interest of the State is served, and no duty of the prosecutor advanced, by the suppression of evidence favorable to the defendant. On the contrary, the prosecutor fulfills his most basic responsibility when he fully airs all the relevant evidence at his command***." [10]

See also *Id.*, at fn.17.

1.6 Where is the Defendant in all of this? Was the Grand Jury given the Plaintiff's notification of a ZERO balance from the Quiet title to consider? Was the Grand Jury given Notice that there was no deficiency or assessment applicable to Chadsey, cited in Collins as an essential element? 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. [11] If it cannot be proven that the law as briefed has been permitted to operate, the Plaintiff's charges under 26 USC § 7201, *a fortiori*, 18 USC § 1, must fail under the law as briefed.

> "Petitioner's claim may still be reviewed in this collateral proceeding ***if he can establish that the constitutional error in his plea colloquy "has probably resulted in the conviction of one who is actually innocent.***" *Murray v. Carrier*, 477 US, at 496. ***To establish actual innocence, petitioner must demonstrate that, " 'in light of all the evidence,' " "it is more likely than not that no reasonable juror would have convicted him***." *Schlup v. Delo*, 513 US 298, 327-328 (1995) (quoting Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev 142, 160 (1970))." [12]

Probable cause was lacking *ab initio* and the attached Complaint and Memorandum show Plaintiff's agents to have aging prior knowledge of all of these deficiencies.

Plaintiff Council is a long experienced trial attorney who must be presumed to know the law and procedures and therefore intentionally defrauding the court of the entire law and evidence. The statutes are plain and not subject to interpretation (Zander, Scalia, 6-5-2006).

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[10] See *US v. Agurs*, 427 US 97, 116 (1976)(dissent).
[11] 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.
[12] See *Bousley v. United States*, 523 US 614 (1998).

II. CONCLUSION & RELIEF.

2.1 Defendant must place this Court on mandatory judicial notice of the authorities cited in the attached Complaint in all of its parts, and he understands a failure to dismiss while the record is void of proof of personam jurisdiction vitiates the appearance of fairness and constitutes a violation of 18 U.S.C. § 242, thus imposing upon him 18 U.S.C. § 4 complaining requirements. (See Counts 1-7, and 9 of Complaint), at a time when Congressional Judiciary Committees are so exceedingly busy with existing matters of equal importance. Imagine, a conspiracy to defraud the Plaintiff out of a balance of ZERO or some nebulous unknown quantity (according to the Plaintiff); isn't that called "compliance"?

2.2 Isn't it true that there would be no case had Mr. Chadsey or the Defendant been billed and then paid ANY LAWFUL sums in controversy? Where is the essential element of deficiency and assessment? Should Cahdsey and I pay sums the IRS says we do not owe? If so, when and why? Is Defendant to be imprisoned for failing to owe a tax, or will it be over some sort of *sudden death* sort of approach to prosecutorial discretion through impromptu culpability in random and baseless prosecutions? The statutes are clear; no liability means no crime.

> "***To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort***, see *North Carolina v. Pearce*, *supra* at 738 (opinion of Black, J.), ***and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is "patently unconstitutional***." *Chaffin v. Stynchcombe*, *supra* at 32-33, n.20. See *United States v. Jackson*, 390 U.S. 570. But in the "give-and-take" of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer." [13] Were Brian Chadsey not completely deceived and intimidated by the prosecution would there be a plea or any bought or extorted testimony?

2.3 The IRS itself prevented Mr. Chadsey and the Defendant from paying the sums in controversy by failing to assess and bill Brian and defendant what was owed them, when such could have indeed averted this prosecution; that's entrapment. Surely due process fails when an essential element is missing and prosecution's refusal to cooperate with pretrial discovery, and was granted a motion in lemine that prevented the law from being introduced into the prosecution's equation stands as the sole obstacle to dismissal for the lack of lawful authority to

[13] See *Bordenkircher v. Hayes,* 434 U.S. 357, 363 (1978).

do so much as speak to the Defendant, much less prosecute over an unknown un-assessed, and unnoticed balance testified as "we guess and we think maybe" of perhaps ZERO. The prosecutors ranting fit is not evidence; and the burden was not met even to jurisdiction or nature.

2.4 Can this "mere territorial court' (Bolzac, Mookini) Court proceed, is the Court complete, when the record is and will remain void of proof that Defendant participated in any wrongdoing, that he evaded some unknown and undefined tax (of ZERO) other than those he does not owe or which are imposed through regulation alone, or that the law imposes a duty of any kind upon him? Can the Court proceed against one who the Plaintiff told was *non culpabilis* many years ago, whose status has not changed and still serve its purpose? The Plaintiff has entrapped the innocent Defendant, as testified by Scheets, through illegal search and seizure in clandestine wiretaps and fraud; entrapped Chadsey through unlawful search and seizure without the federal zone jurisdiction (4 USC 72) for extortion and intimidation, in its violation of 18 USC §§ 241, 242, and 1962 against him and has asked the Court to participate.

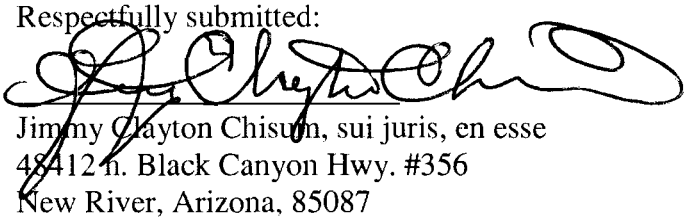
2,5 Any failure to dismiss seeks to redefine *due process* in a "sham" way not approved by the Supreme Court in their Noerr-Pennington Doctrine when there is no statute for liability that can be read in its simple language to satisfy the Supreme Court precedent decisions in Connolly, Lanier or Zander 2006 standards for language and interpretations of the language furnished by Congress in Statute. The often noted lack of a liability statute imposing a lawful duty under 26 USC supported by properly promulgated regulations, SC Mersky, written in simple language common men can comprehend leaves this court without a statute upon which to rest jurisdiction of the living man who is a citizen found at home within his state and without the federal zone as defined in 4 USC 72. Butchers Union, Pollack, Stanton, Bruschaber, Evans, Gore , Gould and all the rest cited in Judicial notices and in the attached Complaint, joinder, brief and exhibits are incorporated by this reference as fully set out herein.

2.6 Defendant hereby challenges this Court's personam jurisdiction in relation to issues raised in the attached Memo as briefed. Issues A through D (pg.16-35), and Issue F and G (pg.38-46), constitute a jurisdictional bar on due process and statutory grounds, in this instance, and Defendant is entitled to dismissal as a matter of right. Personam jurisdiction is nonexistent so essential elements are lacking, and the Plaintiff's claim must be viewed as one which fails to state a claim upon which relief may be granted, *a fortiori*, it must be dismissed with prejudice.

Defendant moves the court in it's Article III judicial capacity for the order vacating the verdict of the jury, with prejudice, dismissing the faulty indictment, with prejudice, for return of the bond, and such other sanctions as the court deems just to alter the behavior of the plaintiff.

Dated: 5 July 2006

Respectfully submitted:



Jimmy Clayton Chisum, sui juris, en esse
48412 n. Black Canyon Hwy. #356
New River, Arizona, 85087

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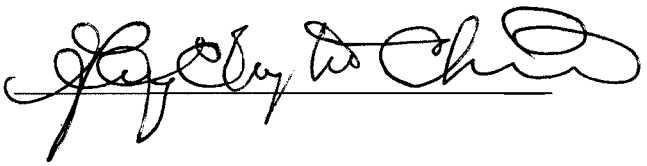
Certificate of Service:

I, Jimmy Clayton Chisum do hereby serve notice that I have personally delivered the Plaintiff service to the US Attorneys office at 1200 W. Okmulgee, Muskogee, Oklahoma 74401 this 5th day of July, 2006 AD.



UNITED STATES CONGRESS
WASHINGTON, D.C., **filed 12/28/05**.

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

vs.

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

CERTIFICATE OF SERVICE
of Joinder of Similarly Situated Parties

I, ERNESTO S. GASPAR, do hereby declare that on June 9, 2006, I did deposit the attached document (**Jimmy Clayton Chisum**'s Joinder of similarly situated parties to the above captioned 18 USC § 4 Complaint) in U.S. Post 1st Class and in adequate packaging addressed to the following Congressional committees and members at the two addresses below and as instructed by postal protocol personnel:

***U.S. House of Representatives:** House Postal Operations, 9140 East Hampton Drive, Capital Heights, MD 20743, for distribution to the designated locations below.

****U.S. Senate:** U.S. Senate Post Office, MAIL ROOM SH - B21, Washington, D.C. 20510-7220, for distribution to the designated locations below.

*** Committee on Judiciary**
Hon. F. James Sensenbrenner, Jr.
2449 Rayburn House Office Bldg.
Washington, DC 20515

*** Comm. Gov't Reform/Hon. Tom Davis**
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

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

****Joint Committee on Taxation**
Hon. Charles E. Grassley
135 Hart Senate Office Building
Washington, DC 20510-1501

Dated: June 9, 2006

Signature

TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

No. [FILE NUMBER - Please advise]

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

Complainants,

vs.

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

DEFENDANTS.

COMPLAINT PURSUANT TO 18 U.S.C. § 4 Misprision of felony;
Violations include 18 U.S.C. §§ 3, 4, 241, 242, 876(d),
880, 1341, 1343, 1623, 1951(a), 1962(c),
1962(d); 26 U.S.C. § 7214.

VERIFIED JOINDER OF PARTIES TO COMPLAINT
- **Jimmy Clayton Chisum**, an American, hereby joins -

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*Joinder of similarly situated party as Co-Complainant.

Dated: June 3rd, 2006. Please provide file or complaint number for future reference. **Deemed filed with Joint Committee on Taxation, Committee on Government Reform, and House Judiciary Committee**.

1. VERIFIED AFFIDAVIT OF JOINDER.

1.1 I, Jimmy Clayton Chisum, **do hereby incorporate the above captioned 18 U.S.C. § 4 complaint** (*David R. Myrland, et al., v. U.S. Department of Justice, et al.*, certificate of service dated 12/28/05) by this reference as if fully restated herein, I hereby join it as a Co-Complainant, and I hereby authorize this verified Joinder to be distributed to Congress as such. The attached documents are authentic and prove that I am similarly situated to Complainants in relation to several crimes alleged the subject Complaint. I have too much respect for the law and Congress than to remain silent and I view this Joinder as my legal duty under 18 U.S.C. § 4. As I demonstratively told U.S. Dist. Judge Ronald White, **I don't believe** that I have a duty to file a tax return or pay an income under 26 U.S.C., nor do I believe that I am "willful" regarding any of its penal provisions, civil or criminal. **I am facing sentencing for providing legitimate services, which the U.S. claims caused the loss of taxes nobody can prove Americans actually owe.** All services I provided were absolutely legal but I was charged for contradicting the IRS and its whims, which are proven to have nothing to do with the law. The people for whom I provided services never owed a tax to evade, as has been proven and as briefed.

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

Exhibit A: A True Bill (indictment) against Complainant filed 4/14/05 alleging four counts of tax evasion in violation of 26 U.S.C. § 7201.

Exhibit B: Three judicial notices filed by Complainant stating his beliefs as to 26 USC's inapplicability to him and others similarly situated.

Exhibit C: Excerpts from transcript of Complainant's 2005 hearing(s) showing ruling of "frivolous."

1.3 I am an American, born and raised in the fifty freely associated compact states ("countries", see 28 USC 297(b)), and my exhibits (attached) show me to be a victim of misenforcement as briefed, and of additional crimes on the part of Defendants new and previously named alike.

II. JOINDER OF SIMILARLY SITUATED DEFENDANTS.

2.1 Complainant hereby joins the following individuals as parties defendant to certain charges alleged in the Complaint. JEFFREY A. GALLANT and SHELDON J. SPERLING are the U.S. Attorneys responsible for the commencement of false charges against the Complainant (at the behest of previously named Defendant ALBERT GONZALES) in the attached indictment (**Ex.A** hereto) or who are purported to be associated with is procurement, proving that they are engaged in conduct identical to individuals already named as Defendants to the Complaint, and are similarly situated to Defendant WESTINGHOUSE, and thus are hereby joined under Counts 1-5, 13-18, and 25 of the Complaint. Complainant hereby joins Defendants GONZALES (as repeat offender), JEFFREY A. GALLANT and SHELDON J. SPERLING to the Complaint as similarly situated and now specifically named Defendants to the Complaint. The address for these Defendants is 1200 W. Okmulgee St., Muskogee, Oklahoma 74401.

2.2 Complainant hereby names U.S. District Judge RONALD A. WHITE as a party similarly situated to Defendant KING already named, and hereby joins WHITE to the subject Complaint. In the course of the criminal proceedings against the Complainant, WHITE ruled that everything was frivolous unless the government was presenting it. (**Ex.C** hereto) Supreme Court decisions were swept aside as frivolous and meaningless in relation to his court. The record in Complainant's criminal case is utterly void of jurisdiction despite Complainant's many challenges to such. Despite Complainant's express testimony as to his beliefs, WHITE precluded the jury from determining "willfulness" under 26 USC 7201 (evasion) and ruled contrary to Complainant's express testimony.

2.3 Defendant WHITE's exercise of dominion over the element of willfulness is an egregious abuse of discretion constituting purely an end run around the Complainant's rights to a jury trial and to due process. If WHITE were to allow the Complainant access to the Court the innocent would go free; not in WHITE's [court]. Defendant WHITE's address is United States District Court, Eastern District of Oklahoma, 101 N. Fifth Street, Muskogee, Oklahoma 74401.

2.4 Defendant WHITE is hereby joined to Counts 1, 2, 3, 5, 12, and 14-18 of the subject Complaint as an actor in a known racketeering operating to tax and imprison Americans without lawful authority and with the intent to usurp the law he's sworn to uphold and to abolish the Constitution he's sworn to defend, viewing judicial discretion as license to pillage. No professional in the country can deny the conclusions in the Memo's Issues A, B, C, D, and E, all of which dispose of Complainant's prosecution and sentence, yet he is bound for prison, in America; the Pledge of Allegiance is a lie. Complainant now sees vivid proof that he's been correct all along in believing that 26 U.S.C. imposed no duty of any nature upon him. Complainant demands that Defendant WHITE be removed from office for conduct unbecoming the judiciary and that he be imprisoned for violating the rights to liberty and to due process duly secured to the Complainant.

2.5 Until in personam jurisdiction is proven Complainant understands this prosecution to be a false one, conducted under the cloak of protective orders, one unfit for open examination in a *nation of laws*. Complainant views any court's failure to dismiss in the absence of proof of in personam jurisdiction being placed upon the record as a violation of 18 U.S.C. § 242, *a fortiori*, he must complain to Congress under 18 U.S.C. § 4. (See Count Nine, pg. 19 of Complaint). Complainant requests of Congress that it craft a Bill requiring federal courts to allow juries full and unfettered access to any and all documents or other evidence filed by any and all individuals pursuant to 18 U.S.C. §§ 3 and 4.

III. ADDITIONAL CHARGES & DEFENDANTS.

COUNT; Deprivation of rights.

3.1 Complainant's hereby name and join as a Defendant to the subject Complaint U.S. District Court judge WHITE for conduct on the bench which is utterly repugnant to a belief in the law and which constitutes a blaring violation of Complainant's rights to due process, as it relates to said Court adhering to the law and "say[ing] what the law is", as is it's duty. (See Memo at pg.17, ¶ 4.2). When faced with challenges to in personam jurisdiction, WHITE's ruling was that it is "frivolous" to assert such challenges, thus shielding by his design the DOJ from having to show how the law operates to imprison an American. (See **Ex.D** hereto). The record in Complainant's case is void of such proof despite demonstrative protest and pleading upon the

matter. Thus, WHITE's ruling that such a challenge is "frivolous" constitutes a violation of 18 U.S.C. § 242 Deprivation of rights.

COUNT; False declarations before grand jury or court.

3.2 Defendants ALBERT GONZALES, JEFFREY A. GALLANT and SHELDON J. SPERLING uttered to the Grand Jury that Complainant was "willful" in aiding another to not pay or evade a tax, when in fact the alleged tax debt was not even owed by another, and when he believes all services he provides to be legal. These Defendants intentionally brought false charges against Complainant because they hate the very Americans they've sworn to protect. This contrived and wholly false utterance to the Grand Jury on the part of the Defendants constitutes a clear violation of 18 U.S.C. § 1623 False declarations before grand jury or court.

COUNT; False declarations before grand jury or court.

3.3 Defendants ALBERT GONZALES, JEFFREY A. GALLANT and SHELDON J. SPERLING uttered to U.S. District Court that Complainant was "willful" in aiding another to not pay or evade a tax, when in fact the alleged tax debt was not even owed by another, and when he believes all services he provides to be legal. These Defendants intentionally brought false charges against Complainant because they hate the very Americans they've sworn to protect. This contrived and wholly false utterance to U.S. District Court on the part of the Defendants constitutes a clear violation of 18 U.S.C. § 1623 False declarations before grand jury or court.

COUNT; Deprivation of rights.

3.4 Defendant WHITE's preclusion of the jury from determining the essential element of willfulness under 26 USC § 7201, and his use of such to facilitate contradicting the truth (See **Ex.B**), that Complainant had no belief in a duty, was calculated and executed with the intent to deprive the Complainant of his liberty when in fact he is innocent. This conduct on the part of WHITE is a plain violation of 18 USC § 242 Deprivation of rights.

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IV. CONCLUSION.

4.1 Defendants are seeking to destroy a family without cause or lawful authority as has been proven and as briefed; Complainant's courts are at war with him. This Joinder is public record in a specific and distinct location in that system in place to hold all men to the letter of the law, and Congress has required that all such conduct be reported, cataloged, evaluated and decided upon, as it relates to the authority of any respective judge, civilian or military authority as 18 U.S.C. § 4 provides.

4.2 Complainant sees vast and broad protections in the work product of Congress and is of the belief that federal criminal statutes exist, even in court, and therefore requires cogent rebuttal to dissuade them from believing in 18 U.S.C. § 4 requirements as stated, *supra*. Complainant has chosen as a matter of right the legislative branch as his "civilian authority" to receive his accusations of extortion, racketeering, and has clearly applied the law to fact in a way which grossly eclipses in competency that approach perfected by the Defendants, as proven over literally case upon case, a myriad of such, where judicially sanctioned silence and assorted procedural deficiencies as to proof of in personam jurisdiction under the law served as the Defendants' sole savior. (See Memorandum in support of Complaint to Congress at pg.1-5, 52-58).

4.3 If Complainant is mistaken as to the operation of the law as briefed, the Defendants would have a brief proving it, and they would not require a protective order against Congress.

V. VERIFICATION.

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

5.2 I, Jimmy Clayton Chisum, do hereby declare under penalties of perjury (28 U.S.C. § 1746) that the statements and allegations made herein are true and correct to the very best of our

knowledge, and that no material falsity is believed to exist. Executed this 3rd day of the month of June, 2006.

Jimmy Clayton Chisum, Affiant/Complainant

5.3 The above affirmation was subscribed and duly sworn to before me this 3rd day of the month of June, 2006, by Jimmy Clayton Chisum.

5.4 I, Terry I. Major, am a Notary under license from the State of Arizona whose Commission expires Apr. 21, 2009.

Terry I Major
Notary signature

Respectfully submitted:

Jimmy Clayton Chisum

(personal contact information attached)

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TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

No. [PLEASE SUPPLY FILE NUMBER]

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

Complainants,

vs.

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

DEFENDANTS.

COMPLAINT PURSUANT TO 18 U.S.C. § 4 Misprision of felony;
Violations include 18 U.S.C. §§ 3, 4, 241, 242, 876(d), 880, 1341, 1343, 1623, 1951(a), 1962(c), 1962(d); 26 U.S.C. § 7214.

VERIFIED CRIMINAL COMPLAINT

David R. Myrland
6619 132nd Ave. NE #100
Kirkland, WA 98033

*Table of Contents at page 2.

Supplied to all members: House Judiciary Committee, Committee on Government Reform, and Joint Committee on Taxation.

Exhibit A:

Exhibit A: True Bill from Grand Jury naming Complainant Jimmy Clayton Chisum under four counts of tax evasion (26 USC § 7201) and as a principal (18 USC § 2, Eastern Dist. of Oklahoma, #CR-05-43-01-WH, *U.S. v. Chisum*).

Exhibit: A

AO 442 (Rev. 5/93) Warrant for Arrest

UNITED STATES DISTRICT COURT

COPY

EASTERN District of OKLAHOMA

05-6187M

UNITED STATES OF AMERICA

V.

JIMMY C. CHISUM

WARRANT FOR ARREST

DUA 8/11/05

Case No. CR-05-43-01-WH

PD 1014339

2005 APR 14 PM 03:08 U.S. DISTRICT COURT EASTERN DISTRICT OF OKLAHOMA RECEIVED

2388009

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest JIMMY C. CHISUM
Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

X Indictment ☐ Information ☐ Complaint ☐ Order of court ☐ Violation Ntc. ☐ Probation Violation Petition

charging him or her (brief description of offense)

Cts. 1, 2, 3 and 4: Tax Evasion.

in violation of 26 United States Code, Section(s) 7201
18 2

WILLIAM B. GUTHRIE
Name of Issuing Officer

U.S. COURT CLERK
Title of Issuing Officer

By: _____
Deputy

April 14, 2005
Date

Muskogee, Oklahoma
Location

Bail fixed at $ _____ by _____
Name of Judicial Officer

DO NOT EXECUTE RETURN ON THIS COPY CONTACT: U.S. MARSHALS 918-687-2523	DO NOT EXECUTE RETURN ON THIS COPY CONTACT: U.S. MARSHALS 918-687-2523

This warrant was received and executed with the arrest of the above-named defendant at _____

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

COPY COPY

** TOTAL PAGE.02 **

ZZL-7639

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIMMY C. CHISUM,

Defendant.

SEALED

No. CR-05- 43 -WH

INDICTMENT

The Federal Grand Jury charges:

COUNT ONE

[26 U.S.C. §7201 and 18 U.S.C. §2 – Tax Evasion]

From on or before January 1, 1997, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM,** did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1997 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

COUNT TWO

[26 U.S.C.§ 7201 and 18 U.S.C. §2 – Tax Evasion]

From on or before January 1, 1998, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1998 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

COUNT THREE

[26 U.S.C.§7201 and 18 U.S.C. §2 – Tax Evasion]

From on or before January 1, 1999, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1999 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

COUNT FOUR

[26 U.S.C.§7201 and 18 U.S.C. §2 – Tax Evasion]

From on or before January 1, 2000, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM,** did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 2000 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

A TRUE BILL:

Donald L. Smith

FOREMAN OF THE GRAND JURY

SHELDON J. SPERLING
United States Attorney

JEFFREY A. GALLANT
Assistant United States Attorney

Exhibit B:

Exhibit B: Three judicial notices from Complainant's federal tax case.

Exhibit: B

United States District Court in and for the Eastern District of Oklahoma

United States of America Plaintiff	)	**Case No. CR 05-43 WH**
v.	)	**Judicial Notice 3 Stare Decisis**
Jimmy C. Chisum Defendant Pro Per	)	**Case History on Limited Federal Jurisdiction**

Defendant moves the court to take Judicial Notice of the united States Constitutional provisions; Court decisions; and Statutes controlling the Article III jurisdiction of this court in this case. There are three express constitutional limitations contained in the Federal Constitution and supporting case history.

Territorial limitation to jurisdiction

Interstate Commerce limitation to Jurisdiction

Constitutional Prohibition against interfering with Contracts

The Court and United States are limited territorially to Article 1 Section 8 Clause 17 and article 4 section 2 to territories without the states.

"Property rights are among the most sacred of rights secured by the American limited Constitutional government; and the first right of the people trespassed when the government seeks to leave it's constitutional confinements" (Thomas Jefferson 1804).

Internal Revenue manual 4.10.7.2.9.8 (05-14-1999): "Importance of Court Decisions

1. ***"Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.***

2. ***"Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code."***

Bailey v. Alabama, 219 U.S. 219, 239. [357 U.S. 513, 527].

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any

> ***"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."***

COOPER v. AARON, 358 U.S. 1 (1958)

> ***"No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. P. 18."***

> ***"The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights, when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 15-16."***

The American public should know the functions and delegated authority of federal agencies because it is charged with the knowledge of the scope and limitations upon the authority of federal agents, who can only act within the scope of such authority; see

***Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384, 68 S. Ct. 1, 3 (1947)**; *Dade Park Jockey Club v. Commonwealth*, 253 Ky. 314, 69 S.W.2d 363, 365 (1934); *Morris Plan Bank of Georgia v. Simmons*, 201 Ga. 157, 39 S.E.2d 166, 175 (1946); *Northern Pac. Ry. Co. v. United States*, 70 F. Supp. 837, 860 (D.Minn. 1946); *Sunshine Dairy v. Peterson*, 183 Or. 305, 193 P.2d 543, 552 (1948); ***United States v. Jones*, 176 F.2d 278, 281 (9th Cir. 1949)**; *Patten v. State Personnel Board*, 234 P.2d 987, 990 (Cal. App. 1951); *State ex rel Young v. Niblack*, 99 N.E.2d 839, 841 (Ind. 1951); *State v. Hartford Accident & Indemnity Co.*, 138 Conn. 334, 84 A.2d 579, 581 (1951); *Davis v. Pelley*, 102 N.E.2d 910, 912 (Ind. 1952); *Lien v. Northwestern Engineering Co.*, 54 N.W.2d 472, 476 (S.D. 1952); *Sittler v. Board of Control of Michigan College*, 333 Mich. 681, 53 N.W.2d 681, 684 (1952); *Bear River Sand & Gravel Corp. v. Placer County*, 258 P.2d 543, 546 (Cal. App. 1953); *Rogers v. County Comm. of New Haven County*, 141 Conn. 426, 106 A.2d 757 (1954); *Mason County Civic Research Council v. County of Mason*, 343 Mich. 313, 72 N.W.2d 292, 296 (1955); *Government of Virgin Islands v. Gordon*, 244 F.2d 818, 821 (3rd Cir. 1957); *Joseph A. Cicci, Inc. v. Allanson*, 187 N.Y.S.2d 911, 913 (1959); *Atlantic Co. v. Moseley*, 215 Ga. 530, 111 S.E.2d 239, 242 (1959); *Flavell v. Dept. of Welfare, City and County of Denver*, 355 P.2d 941, 943 (Colo. 1960); *City of Calhoun v. Holland*, 222 Ga. 817, 152 S.W.2d 752, 754 (1966); ***Gray v. Johnson*, 395 F.2d 533, 537 (10th Cir. 1968)**; *Gammill v. Shackelford*, 480 P.2d 920, 922 (Okl. 1970); *Baker v. Deschutes County*, 498 P.2d 803, 805 (Or.App. 1972); *City of Mercer Island v. Steinmann*, 9 Wash. App. 479, 513 P.2d 80, 83 (1973); ***United States v. Gemmill*, 535 F.2d 1145 (9th Cir. 1976)**; ***Lopez-Telles v. I.N.S.*, 564 F.2d 1302 (9th Cir. 1977)**; ***Bollow v. Federal Reserve Bank*, 650 F.2d 1093, 1100 (9th Cir. 1981)**;

***Lavin v. Marsh*, 644 F.2d 1378, 1383 (9th Cir. 1981);** *Smith v. Sorensen*, 748 F.2d 427, 432 (8th Cir. 1984); and *Watrel v. Commonwealth Dept. of Education*, 488 A.2d 378, 381 (Pa. Comwlth. 1985). And acts of federal agents without delegated authority are void; see *Cudahy Packing Co. v. Holland*, 315 U.S. 357, 62 S.Ct. 651 (1942); *United States v. Giordano*, 416 U.S. 505, 94 S.Ct. 1820 (1974); *United States v. Pees*, 645 F. Supp. 687 (D. Col. 1986); *United States v. Hovey*, 674 F. Supp. 161 (D. Del. 1987); ***United States v. Spain*, 825 F. 2d 1426 (10th Cir. 1987); *United States v. Emerson*, 846 F. 2d 541 (9th Cir. 1988); *United States v. McLaughlin*, 851 F. 2d 283 (9th Cir. 1988);** and ***United States v. Widdowson*, 916 F.2d 587, 589 (10th Cir. 1990).** If a federal agent exceeds his delegated authority and commits a tort within a state, he may be sued in state court; see ***Johnston v. Earle*, 245 F. 2d 793 (9th Cir. 1957);** *Hunsucker v. Phinney*, 497 F. 2d 29 (5th Cir. 1974); and *Rutherford v. United States*, 702 F.2d 580 (5th Cir. 1983).

The USA has no jurisdiction inland.

Caha v. US, 152 US 211, 214 14 S. Ct. 513 (1894).

> ***"The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government," 152 US 215.***

New York v US 505 us 124, 137

> ***"... if a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of State Sovereignty reserved by the Tenth Article of amendment, it is necessarily a power the Constitution has not conferred on Congress.....***
>
> ***It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered."..... As JUSTICE STOREY put it, ".. this amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpretation the Constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the State authorities....Congress exercises its conferred powers subject to the limitations contained in the Constitution."***

New York v US at 155 (1992):

> ***"the constitution created a Federal Government of limited powers"*** Gregory v Ashcroft, 501 U.S. 452, 457 (1991); ***and while the Tenth Amendment makes explicit that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"... "all is retained that is not surrendered,"*** US v Darby, 312 US 100, 124(1941).

Utah Division of State lands v US, 482 US 193, 169 (1987) the Supreme Court states.

> ***When the 13 Colonies became independent from Great Britain, they claimed title to the land... within their boundaries as the sovereign successor to the British***

Crown.... Because all subsequently admitted States enter on an "equal footing" with the original 13 States, they too hold title to the land.... Within their boundaries upon entry into the Union."

And at 170 the court says

"thus under the Constitution, the Federal Government could defeat the prospective State's title to land .. by a pre-statehood conveyance of the land to a private party for a public purpose appropriate to the Territory."

The court further stated on Page 177:

"...we find it inconceivable that Congress intended to defeat the future states' title to all such lands in the western United States. Such an action would be wholly at odds with Congress' policy of holding this land for the ultimate benefit of the future States.

In sum, Congress did not definitely declare or otherwise make very plain either its intention to reserve.. or to defeat Utah's title .. under the equal footings doctrine. Accordingly, we hold that the bed of Utah lake passed to Utah upon that State's entry into statehood.."

Sources for additional authority: C.J.S., "Officers," §§ 190-199; C.J.S., "Public Admin. Law," §§ 49-58; Am Jur2d, "Public Officers," §§ 298-311; Am Jur2d, "Admin. Law," §§ 69-74, and 221-226. Related: 65 ALR 811, and 107 ALR 1483 (delegations re taxes).

Pierce v. United States ("The Floyd Acceptances"), 7 Wall. (74 U.S.) 666 (1869)::

"We have no officers in this government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the Legislature and the Judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law," 7 Wall., at 677-678.

United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882):

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives," 106 U.S., at 220.

United States v. Smith, 124 U.S. 525, 533, 8 S.Ct. 595 (1888):

"The constitution ... declares that 'the congress may by law vest the appointment of such inferior officers as they think proper in the

president alone, in the courts of law, or in the heads of departments.' There must be, therefore, a law authorizing the head of a department to appoint clerks of the collector before his approbation of their appointment can be required. No such law is in existence. Our conclusion, therefore, is that ... clerks of the collector .... are not appointed by the head of any department within the meaning of the constitutional provision."

Utah Power and Light Co. v. United States, 243 U.S. 389, 37 S.Ct. 387 (1917):

"Of this it is enough to say that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit," 243 U.S., at 409.

Botany Worsted Mills v. United States, 278 U.S. 282, 49 S.Ct. 129 (1929):

"We think that Congress intended by the statute to prescribe the exclusive method by which tax cases could be compromised, requiring therefor the concurrence of the Commissioner and the Secretary, and prescribing the formality with which, as a matter of public concern, it should be attested in the files of the Commissioner's office; and did not intend to entrust the final settlement of such matters to the informal action of subordinate officials of the Bureau. When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode," 278 U.S., at 288-89.

See also *Brubaker v. United States*, 342 F.2d 655 (7th Cir. 1965).

United States v. Mott, 37 F.2d 860, 862 (10th Cir. 1930):

"Where an executive officer, under his misconstruction of the law, has acted without or beyond the powers given him, the courts have jurisdiction to restore the status quo ante insofar as that may be done (cites omitted)."

Affirmed, *Mott v. United States*, 283 U.S. 747, 51 S.Ct. 642 (1931).

Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587 (1931):

"Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions," 283 U.S., at 649.

Royal Indemnity Co. v. United States, 313 U.S. 289, 61 S.Ct. 995 (1941):

> ***"Power to release or otherwise dispose of the rights and property of the United States is lodged in the Congress by the Constitution. Art. IV, § 3, Cl. 2. Subordinate officers of the United States are without that power, save only as it has been conferred upon them by Act of Congress or is to be implied from other powers so granted. [cites omitted]. Collectors of internal revenue are subordinate officers charged with the ministerial duty of collecting taxes... There is no statute in terms authorizing them to remit taxes, to pass upon the claims for abatement of taxes or to release any obligation for their payment. Only the Commissioner, with the consent of the Secretary of the Treasury, is authorized to compromise a tax deficiency for a sum less than the amount lawfully due...***
>
> ***"There is thus no basis in the statutes of the United States for implying an authority in a collector to release a bond for the payment of the tax which the Commissioner alone is permitted to reduce by way of compromise when the Secretary of the Treasury consents,"*** 313 U.S., at 294-95.

United States v. Watashe, 102 F.2d 428, 431 (10th Cir. 1939).

> ***"[T]he authority of ministerial officers is to be strictly construed as including only such powers as are expressly conferred, or necessarily implied,"*** 141 F.2d, at 913.

Stark v. Wickard, 321 U.S. 288, 64 S.Ct. 559 (1944):

> ***"When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted.... The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts,"*** 321 U.S., at 309-10.

See also *Garvey v. Freeman*, 397 F.2d 600, 605 (10th Cir. 1968).

Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 68 S.Ct. 1 (1947):

> ***"Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority," 332 U.S., at 384.***

United States v. Jones, 176 F.2d 278 (9th Cir. 1949):

> ***"This means that a public officer, in exercising powers conferred upon him by statute and regulation, is bound to follow the mode or manner prescribed. One who deals with such official is on his notice of possible limitations of authority. And no estoppel can arise against the Government from the***

performance of unauthorized acts or from authority exercised in a manner forbidden," 176 F.2d, at 281.

Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct. 1457 (1949): suits agent govt agents: personal if without authority.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S.Ct. 863 (1952): Truman's takeover of the steel mills held unconstitutional.

Peters v. Hobby, 349 U.S. 331, 75 S.Ct. 790 (1955):

> ***"Agencies, whether created by statute or Executive Order, must of course be free to give reasonable scope to the terms conferring their authority. But they are not free to ignore plain limitations on that authority***," 349 U.S., at 345.

Flavell v. Dept. of Welfare, City and County of Denver, 355 P.2d 941 (Colo. 1960):

> ***"It follows that a collateral attack may be made here for 'acts or orders [of administrative officers or agencies] which do not come clearly within the powers granted or which fall beyond the purview of the statute granting the agency or body its powers [such orders] are not merely erroneous, but are void'....'They [officers or agencies] are without power to act contrary to the provisions of the law or the clear legislative intendment, or to exceed the authority conferred on them by statute,"*** 355 P.2d, at 943.

Tulsa Exposition and Fair Corp. v. Board of County Commissioners, 468 P.2d 501 (Ok. 1970):

> ***"Counties have only such authority as is granted by statute [cites omitted]. The Board of County Commissioners in exercising corporate powers is limited to those fields expressly assigned to such subdivisions of the state by the legislature [cites omitted]. Public officers possess only such authority as is conferred upon them by law and such authority must be exercised in the manner provided by law,"*** 468 P.2d, at 508.

See also *Brown v. State Election Board*, 369 P.2d 140 (Ok. 1962).

United States v. Gemmill, 535 F.2d 1145 (9th Cir. 1976):

> ***"Absent an explicit delegation from the Secretary, the boundaries of the Forest Supervisors' authority should not be extended into areas the regulations have clearly reserved for higher officials.***
>
> ***"By immediately closing the entire area, the Supervisor went beyond the limits of his authority and exercised a power that had not been granted to him. The closure orders were invalid and the trespass convictions cannot stand," 535 F.2d, at 1152.***

Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093 (9th Cir. 1981):

> ***"All persons in the United States are chargeable with knowledge of the Statutes-at-Large....[I]t is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority,"*** 650 F.2d, at 1100.

Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1523 (D.C. Cir. 1984):

> ***"[W]hen an officer acts wholly outside the scope of the powers granted to him by statute or constitutional provision, the official's actions have been considered to be unauthorized."***

Boulez v. C.I.R., 810 F.2d 209 (D.C.Cir. 1987): Oral compromise held invalid as contrary to regulations. **Court relied upon delegation orders**.

United States v. Providence Journal Company, 485 U.S. 693, 108 S.Ct. 1502 (1988): ***District judge appointed a private attorney to pursue contempt charge against a party in judge's court. On appeal, contempt vacated, and attorney pursued writ, which was granted. In vacating writ, the Supremes held that only the Solicitor General had authority to apply for writ on behalf of the United States, a power not possessed by the attorney. United States v. Solomon, 563 F.2d 1121 (4th Cir. 1977): AG has no right to sue without authority in statute.***

Regents of University System of Georgia v. Carroll, 338 U.S. 586, 597, 598, 70 S.Ct. 370 (1950):

> ***"As an administrative body, the Commission must find its powers within the compass of the authority given it by Congress".***

F.T.C. v. National Lead Co., 352 U.S. 419, 428, 77 S.Ct. 502 (1957):

> ***"the Commission may exercise only the powers granted it by the Act".***

Civil Aeronautics Board v. Delta Air Lines, Inc., 367 U.S. 316, 322, 81 S.Ct. 1611 (1961):

> ***"the fact is that the Board is entirely a creature of Congress and the determinative question is not what the Board thinks it should do but what Congress has said it can do".***

Butcher's Union Co. v. Cresent City Co., 111 US 746 (1884).

> ***"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex,***

> ***and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him.***"

MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943).

> ***"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."***

A look at POLLACK is crucial because, as I shall show this Honorable Court, the Plaintiffs in this lawsuit fall under the ruling of POLLACK and not under the 16th Amendment.

In POLLACK v FARMERS' LOAN & TRUST CO., 157 US 429 (1895), addressed the issue of direct taxes. The Court quoting the Constitution: "No capitation, or other direct, tax shall be laid, unless in proportion to the census...." ***And,***

> ***"As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows."***
>
> ***"...that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated."***

It is also stated in the U.S. Constitution: ***Article 1, sec. 9, "No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken."*** These two prohibitions and limitations on federal taxing authority were never repealed and remain in force in the main body of the Constitution.

Pollack vs. Farmers' Loan and Trust Co., 157 US 429, 582 (1895).

> ***"Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states."***

POLLACK also ruled that the Constitution clearly recognized the two classes of taxation:

> ***"Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." Pollack, 157 US 429, 556 (1895).***

> ***"From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems..."*** Pollack, 157 US 429, 573.

> ***"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation."*** Pollack, 157 US 429, 595.

In 1909, the Corporate Excise Tax Act was passed and the U.S. Supreme Court ruled that this met the requirements of the U.S. Constitutional. There can be no question that the 1909 tax was passed to imposed on corporations, an "income tax", placed on the privilege of incorporation, and fell under the category of excise tax, and therefore was an indirect tax, not subject to the rule of "apportionment".

FLINT v STONE TRACY, 220 US 107 (1911):

> ***"Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."***

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

> ***"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise [231 U.S. 399, 417] or privilege, was not debarred by the***

Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable."

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollack Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation."

"Corporations engaged in such business share in the benefits of the federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business."

"... the annual gains of such corporations are certainly to be taken as income for the purpose of measuring the amount of the tax."

STANTON v BALTIC MINING CO., 240 US 103 (1916):

"Not being within the authority of the 16th Amendment, the tax is therefore, within the ruling of Pollack... a direct tax and void for want of compliance with the regulation of apportionment."

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

"...it was settled in Stratton's Independence... that such tax is not a tax upon property... but a true excise levied on the result of the business.."

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

"...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

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

"...on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation."

PECK v LOWE, 247 US 165 (1918):

"As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."

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

" (The) Income Tax Act of June 30, 1864 (chapter 173, 13 Stat. 223, 281, 282), under which this court held, in Collector v. Hubbard, 12 Wall. 1, 16, that an individual was taxable upon his proportion of the earnings of the corporation although not declared as dividends. That decision was based upon the very special language of a clause of section 117 of the act (13 Stat. 282) that 'the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise.' The act of 1913 contains no similar language, but on the contrary deals with dividends as a particular item of income, leaving them free from the normal tax imposed upon individuals, subjecting them to the graduated surtaxes only when received as dividends (38 Stat. 167, paragraph B), and subjecting the interest of an individual shareholder in the undivided gains and profits of his corporation to these taxes only in case the company is formed or fraudulently availed of for the purpose of preventing the imposition of such tax by permitting gains and profits to accumulate instead of being divided or distributed."

Doyle v. Mitchell Bros., 247 U.S. 179 (1918):

"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

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

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

EISNER v MACOMBER, 252 US 189 (1920),

"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

"As repeatedly held, this did not extend the taxing power to new subjects..."

"...it becomes essential to distinguish between what is and is not 'income', as the term is there used.."

"...we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909...(Stratton's and Doyle)"

"In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to

distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

EVANS v GORE, 253 US 245 (1920):

"If the tax in respect of his compensation be prohibited, it can find no justification in the taxation of other income as to which there is no prohibition; for, of course, doing what the Constitution permits gives no license to do what it prohibits."

"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

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

"It is obvious that these decisions in principle rule the case at bar if the word 'income' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific v Lowe..., where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When we add to this, Eisner v Macomber...the definition of 'income' which was applied was adopted from Stratton's Independence v Howbert, supra, arising under the Corporation Excise Tax Act of 1909... there would seem to be no room to doubt that the word must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now become definitely settled by decisions of this Court."

Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):

"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

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

"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can

Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

FLORA v US, 362 US 145 (1960):

"Our system of taxation is based upon voluntary assessment and payment, not upon distraint."

The definition of distraint in the legal dictionary, "to seize a person's goods as security for an obligation."

U.S. v. BALLARD, 535 F2d 400*:*

"Gross income and not 'gross receipts' is the foundation of income tax liability..."

404, "The general term 'income' is not defined in the Internal Revenue Code."

404, 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources."

UNITED STATES v. MERSKY, 361 U.S. 431 (1960).

"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... When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute."

CALIFORNIA BANKERS ASSN. v. SHULTZ, 416 U.S. 21 (1974).

"...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."

Code and Statute Cross references to the acts of Congress imposing the crime.

1954 Code	1939 code	Vol.	Part	Page	Chap.	Act Section
1. **7201**	145(a),(b)	3	52	513	289	145
2	153(d)	3	52	552	289	340
3.	894(b)(2)(B)	44	2/3	116	27	1114(a)
4.	894(b)(2)(C)	44	2/3	116	27	1114(b)
5	937	47	1/2	245	209	403
6.		48	2/2	753	277	403
7.		49	1/2	1022	829	201(c)
8.		52	n/a	564	289	502
9.		47	1/2	256	209	525
10.	1718(a),(b)	44	2/3	116-117	27	1114(a),(b),(d),(f)
11.	1821(a)(1),(2)	44	2/3	116-117	27	1114(a),(b),(d),(f)
12.	1821(b),(4) 1926,	44	2/3		27	Schedule A(10)
13.		48	2/2	1179	674	8
14.	2557(b)(2),(3)	44	2/3	116-117	27	1114(a),(b),(d)

15	2656(f) 1912,	37	1/2	82	75	
16.	2707(b) 1926,	44	2/3	116	27	1114(a)
17.	2707(c) 1926,	44	2/3	116	27	1114(b)
18.	3604(c) 1938,	52	n/a	573-574	289	803

Each every and all of these statutes lay a tax and performance on ATF excise taxable activities and corporate officers in executing the franchise privilege.

There is no place in the acts of Congress that has any potential of making the United States of America as Distinguished from the United States (94 stat 106) capable of being the complaining or injured party in this common law Article III court and case.

26 USC (IRC) 7201 to 26 CFR cross references NONE; in fact there are none even for ATF. NO regulations from Secretary means no crime is chargeable.

18 USC 2 There are no regulations cited in the finding tables. No regulations means no crime is chargeable.

[UNITED STATES v. LOPEZ, ___ U.S. ___ (1995)

> ***We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to [UNITED STATES v. LOPEZ, ___ U.S. ___ (1995) , 3] the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Ibid.***
>
> ***The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, 8, cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in Gibbons v. Ogden, 9 Wheat. 1, 189-190 (1824):***
>
> ***"Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and***

parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."
The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." Id., at 196. The Gibbons Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

"Comprehensive as the word `among' is, it may very properly be restricted to that commerce which concerns more States than one. . . . The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State." Id., at 194-195.

Gould v Gould 245 US 151 specifically states

"in the interpretation of statutes levying taxes it is the established rule not to extend their implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt <u>they are interpreted most strongly against the government and for the people"</u> Thompkins v Erie RR 1938 agrees.

United States v. Calamaro, 354 U.S. 351, ruled;

"In construing federal revenue statutes, the Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there."

Internal Revenue manual 4.10.7.2.9.8 (05-14-1999): "Importance of Court Decisions

3. ***"Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.***

4. "Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. <u>The Internal Revenue Service must follow Supreme Court decisions.</u> For examiners, Supreme Court decisions have the same weight as the Code."

Bailey v. Alabama, 219 U.S. 219, 239. [357 U.S. 513, 527].

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

28 USCS Sec. 455, and <u>Marshall v Jerrico Inc.</u>, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980):

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See Carey v. Piphus, 435 U.S. 247, 259 -262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

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." ***..... income taxation remains voluntary.... Flora v US; 362 US 145 (1960)***

SOUTH CAROLINA v. BAKER, 485 U.S. 505 (1988).

"Pollack merely represented one application of the more general rule that neither the Federal nor the State Governments could tax income an individual directly derived from any contract with another government. 10 Not only was it unconstitutional for the Federal Government to tax a bond owner on the interest he or she received on any state bond, but it was also unconstitutional to tax a state employee on the income earned from his employment contract, Collector v. Day, 11 Wall. 113 (1871), to tax a lessee on income derived from lands leased from a State, Burnet v. Coronado Oil, 285 U.S. 393 (1932), or to impose a sales tax on proceeds a vendor derived from selling a product to a state agency, Indian Motocycle Co. v. United States, 283 U.S. 570 (1931)."

COPPAGE v. STATE OF KANSAS, 236 U.S. 1 (1915).

'The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates."

MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943).

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

In HOLY TRINITY CHURCH v. UNITED STATES, ***The Supreme Court of the United States arrived at the following conclusion*: "These and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that** this is a Christian nation."

Public law 97-280 ***recognizes*** *"our national need to study and apply the teachings of the Holy Scriptures."* ***NO SOVEREIGN BUT GON NOR KING BUT JESUS.*** THE COURT IS EITHER FOR JUSTICE OR AGAINST JUSTICE.

Doyle v. Mitchell Bros., 247 U.S. 179, 183 (1918):

"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

Smietanka as in the 3rd consideration:

"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):

"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

Helvering v. Edison Brothers' Stores 8 Cir. 133 F2d 575 (1943):

"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918):

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference **in its meaning as used in the two acts."**

U.S. v. Ballard, 535 F2d 400, 1976:

"Gross income and not 'gross receipts' is the foundation of income tax liability..." ***Here the Court makes a distinction between the two and the distinction is based on the word "income" as previously decided by the Court.***

Connally v General Construction Co., 269 US 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."**

US v Lanier, 000 US 95 1717 (1997) reaffirms this doctrine.

"fair warning . . . in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." McBoyle v.

United States, 283 U.S. 25, 27 (1931). " The . . . principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.' " Bouie v. City of Columbia, 378 U.S. 347, 351

United States v. Bishop, 412 U.S. 346, 361::

"This longstanding interpretation of the purpose of the recurring word "willfully" promotes coherence in the group of tax crimes. In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. The Court has said, 'It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the [412 U.S. 346, 361] exercise of reasonable care.' Spies, 317 U.S., at 496 . Degrees of negligence give rise in the tax system to civil penalties. The requirement of an offense committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court. James v. United States, 366 U.S., at 221 -222. Cf. Lambert v. California, 355 U.S. 255 (1957). The Court's consistent interpretation of the word "willfully" to require an element of mens rea implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers."

MEYER v. STATE OF NEBRASKA, 262 U.S. 390, 399 (1923):

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Slaughter-House Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co ., 111 U.S. 746 , 4 Sup. Ct. 652; Yick Wo v. Hopkins, 118 U.S. 356 , 6 Sup. Ct. 1064; Minnesota v. Bar er, 136 U.S. 313 , 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578 , 17 Sup. Ct. 427; Lochner v. New York, 198 U.S. 45 , 25 Sup. Ct. 539, 3 Ann. Cas. 1133; Twining v. New Jersey 211 U.S. 78 , 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219 U.S. 549 , 31 Sup. Ct. 259; Truax v. Raich, 239 U.S. 33 , 36 Sup. Ct. 7, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U.S. 590 , 37 Sup. Ct. 662, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357 , 38 Sup. Ct. 337, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312 , 42 Sup. Ct. 124; Adkins v. Children's Hospital (April 9, 1923), 261 U.S. 525 , 43 Sup. Ct. 394, 67 L. Ed. --; Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147."

Article 1 Sectiion 10 Clause 1; United States Constitution Annotated

"No state shall pass any law..... impairing the Obligation of Contracts "

"Law" Defined.--The term comprises statutes, constitutional provisions,1846 municipal ordinances,1847 and administrative regulations having the force and operation of statutes.1848 But are judicial decisions within the clause? The abstract principle of the separation of powers, at least until recently, forbade the idea that the courts "make" law and the word "pass" in the above clause seemed to confine it to the formal and acknowledged methods of exercise of the law-making function. Accordingly, the Court has frequently said that the clause does not cover judicial decisions, however erroneous, or whatever their effect on existing contract rights.1849 Nevertheless, there are important exceptions to this rule that are hereinafter set forth.

Status of Judicial Decision.--While the highest state court usually has final authority in determining the construction as well as the validity of contracts entered into under the laws of the State, and the national courts will be bound by their decision of such matters, nevertheless, for reasons that are fairly obvious, this rule does not hold when the contract is one whose obligation is alleged to have been impaired by state law.1850 Otherwise, the chal lenged state authority could be vindicated through the simple device of a modification or outright nullification by the state court of the contract rights in issue. Similarly, the highest state court usually has final authority in construing state statutes and determining their validity in relation to the state constitution. But this rule too has had to bend to some extent to the Supreme Court's interpretation of the obligation of contracts clause.1851

Suppose the following situation: (1) a municipality, acting under authority conferred by a state statute, has issued bonds in aid of a railway company; (2) the validity of this statute has been sustained by the highest state court; (3) later the state legislature passes an act to repeal certain taxes to meet the bonds; (4) it is sustained in doing so by a decision of the highest state court holding that the statute authorizing the bonds was unconstitutional ab initio. In such a case the Supreme Court would take an appeal from the state court and would reverse the latter's decision of unconstitutionality because of its effect in rendering operative the act to repeal the tax.1852

Suppose further, however, that the state court has reversed itself on the question of the constitutionality of the bonds in a suit by a creditor for payment without there having been an act of repeal. In this situation, the Supreme Court would still afford relief if the case is one between citizens of different States, which reaches it via a lower federal court.1853 This is because in cases of this nature the Court formerly felt free to determine questions of fundamental justice for itself. Indeed, in such a case, the Court has apparently in the past regarded itself as free to pass upon the constitutionality of the state law authorizing the bonds even though there has been no prior decision by the highest state court sustaining them, the idea being that contracts entered into simply on the faith of the presumed constitutionality of a state statute are entitled to this protection.1854

In other words, in cases of which it has jurisdiction because of diversity of citizenship, the Court has held that the obligation of contracts is capable of impairment by subsequent judicial decisions no less than by subsequent statutes and that it is able to prevent such impairment. In cases, on the other hand, of which it obtains jurisdiction only on the

constitutional ground and by appeal from a state court, it has always adhered in terms to the doctrine that the word "laws" as used in Article I, Sec. 10, does not comprehend judicial decisions. Yet even in these cases, it will intervene to protect contracts entered into on the faith of existing decisions from an impairment that is the direct result of a reversal of such decisions, but there must be in the offing, as it were, a statute of some kind--one possibly many years older than the contract rights involved--on which to pin its decision.1855

In 1922, Congress, through an amendment to the Judicial Code, endeavored to extend the reviewing power of the Supreme Court to suits involving ". . . the validity of a contract wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a State applicable to such contract would be repugnant to the Constitution of the United States. . . ." This appeared to be an invitation to the Court to say frankly that the obligation of a contract can be impaired as well by a subsequent decision as by a subsequent statute. The Court, however, declined the invitation in an opinion by Chief Justice Taft that reviewed many of the cases covered in the preceding paragraphs.

Dealing with Gelpcke and adherent decisions, Chief Justice Taft said: "These cases were not writs of error to the Supreme Court of a State. They were appeals or writs of error to federal courts where recovery was sought upon municipal or county bonds or some other form of contracts, the validity of which had been sustained by decisions of the Supreme Court of a State prior to their execution, and had been denied by the same court after their issue or making. In such cases the federal courts exercising jurisdiction between citizens of different States held themselves free to decide what the state law was, and to enforce it as laid down by the state Supreme Court before the contracts were made rather than in later decisions. They did not base this conclusion on Article I, Sec. 10, of the Federal Constitution, but on the state law as they determined it, which, in diverse citizenship cases, under the third Article of the Federal Constitution they were empowered to do. Burgess v. Seligman, 107 U.S. 20 (1883)."1856 While doubtless this was an available explanation in 1924, the decision in 1938 in Erie Railroad Co. v. Tompkins,1857 so cut down the power of the federal courts to decide diversity of citizenship cases according to their own notions of "general principles of common law" as to raise the question whether the Court will not be required eventually to put Gelpcke and its companions and descendants squarely on the obligation of contracts clause or else abandon them.

"Obligation" Defined.--A contract is analyzable into two elements: the agreement, which comes from the parties, and the obligation, which comes from the law and makes the agreement binding on the parties. The concept of obligation is an importation from the Civil Law and its appearance in the contracts clause is supposed to have been due to James Wilson, a graduate of Scottish universities and a Civilian. Actually, the term as used in the contracts clause has been rendered more or less superfluous by the doctrine that the law in force when a contract is made enters into and comprises a part of the contract itself.1858 Hence, the Court sometimes recognizes the term in its decisions applying the clause, sometimes ignores it. In Sturges v. Crowninshield,1859 Marshall defined "obligation of contract" as "the law which binds the parties to perform their

agreement;" but a little later the same year he sets forth the points presented for consideration in Dartmouth College v. Woodward,1860 to be: "1. Is this contract protected by the Constitution of the United States? 2. Is it impaired by the acts under which the defendant holds?"1861 The word "obligation" undoubtedly does carry the implication that the Constitution was intended to protect only executory contracts--i.e., contracts still awaiting performance, but this implication was early rejected for a certain class of contracts, with immensely important result for the clause.

"Impair" Defined.--"The obligations of a contract," says Chief Justice Hughes for the Court in Home Building & Loan Assn. v. Blaisdell,1862 "are impaired by a law which renders them in valid, or releases or extinguishes them . . ., and impairment . . . has been predicated upon laws which without destroying contracts derogate from substantial contractual rights."1863 But he adds: "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile,--a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court."1864 In short, the law from which the obligation stems must be understood to include constitutional law and, moreover a "progressive" constitutional law.1865

Vested Rights Not Included.--The term "contracts" is used in the contracts clause in its popular sense of an agreement of minds. The clause therefore does not protect vested rights that are not referable to such an agreement between the State and an individual, such as the right of recovery under a judgment. The individual in question may have a case under the Fourteenth Amendment, but not one under Article I, Sec. 10.1866

Footnotes

[Footnote 1846] Dodge v. Woolsey, 59 U.S. (18 How.) 331 (1856); Ohio & M. R. Co. v. McClure, 77 U.S. (10 Wall.) 511 (1871); New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650 (1885); Bier v. McGehee, 148 U.S. 137, 140 (1893).

[Footnote 1847] New Orleans Water-Works Co. v. Rivers, 115 U.S. 674 (1885); City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1 (1898); City of Vicksburg v. Waterworks Co., 202 U.S. 453 (1906); Atlantic Coast Line v. City of Goldsboro, 232 U.S. 548 (1914); Cuyahoga Power Co. v. City of Akron, 240 U.S. 462 (1916).

[Footnote 1848] Ibid.; see also Grand Trunk Ry. v. Indiana R.R. Comm., 221 U.S. 400 (1911); Appleby v. Delaney, 271 U.S. 403 (1926).

[Footnote 1849] Central Land Company v. Laidley, 159 U.S. 103 (1895). See also N.O. Water-Works Co. v. La. Sugar Co., 125 U.S. 18 (1888); Hanford v. Davies, 163 U.S. 273 (1896); Ross v. Oregon, 227 U.S. 150 (1913); Detroit United Ry. v. Michigan, 242 U.S.

238 (1916); Long Sault Development Co. v. Call, 242, U.S. 272, (1916); McCoy v. Union Elevated R. Co., 247 U.S. 354 (1918); Columbia G. & E. Ry. v. South Carolina, 261 U.S. 236 (1923); Tidal Oil Co. v. Flannagan, 263 U.S. 444 (1924).

[Footnote 1850] Jefferson Branch Bank v. Skelly, 66 U.S. (1 Bl.) 436, 443 (1862); Bridge Proprietors v. Hoboken Co., 68 U.S. (1 Wall.) 116, 145 (1863); Wright v. Nagle, 101 U.S. 791, 793 (1880); McGahey v. Virginia, 135 U.S. 662, 667 (1890); Scott v. McNeal, 154 U.S. 34, 35 (1894); Stearns v. Minnesota, 179 U.S. 223, 232-233 (1900); Coombes v. Getz, 285 U.S. 434, 441 (1932); Atlantic Coast Line R. Co. v. Phillips, 332 U.S. 168, 170 (1947).

[Footnote 1851] McCullough v. Virginia, 172 U.S. 102 (1898); Houston & Texas Central R. Co. v. Texas, 177 U.S. 66, 76, 77 (1900); Hubert v. New Orleans, 215 U.S. 170, 175 (1909); Carondelet Canal Co. v. Louisiana, 233 U.S. 362, 376 (1914); Louisiana Ry. & Nav. Co. v. New Orleans, 235 U.S. 164, 171 (1914).

[Footnote 1852] State Bank of Ohio v. Knoop, 57 U.S. (16 How.) 369 (1854), and Ohio Life Insurance and Trust Co. v. Debolt, 57 U.S. (16 How.) 416 (1854) are the leading cases. See also Jefferson Branch Bank v. Skelly, 66 U.S. (1 Bl.) 436 (1862); Louisiana v. Pilsbury, 105 U.S. 278 (1882); McGahey v. Virginia, 135 U.S. 662 (1890); Mobile & Ohio Railroad v. Tennessee, 153 U.S. 486 (1894); Bacon v. Texas, 163 U.S. 207 (1896); McCullough v. Virginia, 172 U.S. 102 (1898).

[Footnote 1853] Gelpcke v. Dubuque, 68 U.S. (1 Wall.) 175, 206 (1865); Havemayer v. Iowa County, 70 U.S. (3 Wall.) 294 (1866); Thomson v. Lee County, 70 U.S. (3 Wall.) 327 (1866); The City v. Lamson, 76 U.S. (9 Wall.) 477 (1870); Olcott v. The Supervisors, 83 U.S. (16 Wall.) 678 (1873); Taylor v. Ypsilanti, 105 U.S. 60 (1882); Anderson v. Santa Anna, 116 U.S. 356 (1886); Wilkes County v. Coler, 180 U.S. 506 (1901).

[Footnote 1854] Great Southern Hotel Co. v. Jones, 193 U.S. 532, 548 (1904).

[Footnote 1855] Sauer v. New York, 206 U.S. 536 (1907); Muhlker v. New York & Harlem Railroad Co., 197 U.S. 544, 570 (1905).

[Footnote 1856] Tidal Oil Company v. Flanagan, 263 U.S. 444, 450, 451-452 (1924).

[Footnote 1857] 304 U.S. 64 (1938).

[Footnote 1858] Walker v. Whitehead, 83 U.S. (16 Wall.) 314 (1873); Wood v. Lovett, 313 U.S. 362, 370 (1941).

[Footnote 1859] 17 U.S. (4 Wheat.) 122, 197 (1819); see also Curran v. Arkansas, 56 U.S. (15 How.) 304 (1854).

[Footnote 1860] 17 U.S. (4 Wheat.) 518 (1819).

[Footnote 1861] Id., 627.

[Footnote 1862] 290 U.S. 398 (1934).

[Footnote 1863] Id., 431.

[Footnote 1864] Id., 435. And see City of El Paso v. Simmons, 379 U.S. 497 (1965).

[Footnote 1865] "The Blaisdell decision represented a realistic appreciation of the fact that ours is an evolving society and that the general words of the contract clause were not intended to reduce the legislative branch of government to helpless impotency." Justice Black, in Wood v. Lovett, 313 U.S. 362, 385 (1941).

[Footnote 1866] Crane v. Hahlo, 258 U.S. 142, 145-146 (1922); Louisiana ex rel. Folsom v. Mayor of New Orleans, 109 U.S. 285, 288 (1883); Morley v. Lake Shore Railway Co., 146 U.S. 162, 169 (1892). That the obligation of contracts clause did not protect vested rights merely as such was stated by the Court as early as Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380, 413 (1829); and again in Charles River Bridge v. Warren Bridge, 36 U.S. (11 Pet.) 420, 539 -540 (1837).

President Reagan often stated "in the present crisis government is not the solution To the problem; government is the problem" in preparation for tax Reform in 1986.

Accused was privileged to be watching when Speaker Gingrich declared the Internal Revenue service the world's biggest terrorist organization DURING Congressional hearings in preparation to Taxpayer Bill of Rights II in 1996.

Accused was blessed to see and read the General Accounting Office 1996 Audit of the internal revenue service that states the service is too messed up to be fixed; and that the service can not prove by its financial records that it ever legally assessed any taxpayer. The 1997 and later audits repeat the charges that the system has not been fixed.

Accused was privileged to be watching the Senate hearings in 1997 when the Senate investigation concluded in the declaration that "the Internal Revenue Service is a Rogue agency wholly out of control".

Defendant has studied these and many other cases in forming his sincerely held beliefs that the Court and IRS are bound by the holding decisions

of the US Supreme Court and that any administrative decision to the contrary is void for fraud upon the court and not with standing.

Restructuring and reform act of 1998 in which the Congress said at least 5 times that the rights of the people far exceed the need for revenue has bee a frequent study of Accused.

Accused was blessed to have the privilege of working with Treasury Inspector General for Tax Administration agent

Defendant has worked and studied for over 20 years for peaceful redress according to the first amendment; only to hear the court say that all Supreme Court cases and statutes on taxation are frivolous because not presented by a title of nobility and privilege attorney in waiver of jurisdiction.

WHEREFORE accused moves this court to take Judicial notice of Constitutional limitations, case History and statutes at large for the laying and collecting of taxes.

McAlister Oklahoma is not within the territorial jurisdiction of the USDC, EDOK.

The practice of Chiropractic is not a privileged excise taxable activity on which Congress has laid a tax.

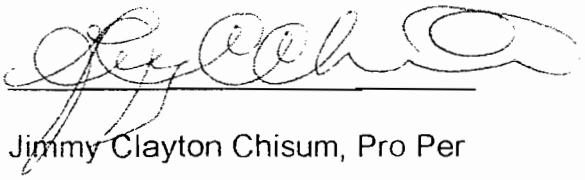
Jimmy C. Chisum common occupation as trustee does not involve interstate commerce and the Obligations of Contracts for trust are protected.

Jimmy C. Chisum, natural man and Propris Persona has not waived any jurisdiction or volunteered to be subject to the jurisdiction of the court.

26 USC 7201 does not empower United States of America to be a complaining or injured party in the common law Article III jurisdiction of EDOK.

18 USC 2 has no implementing regulation to carry it into effect to make Jimmy C. Chisum chargeable in this matter.

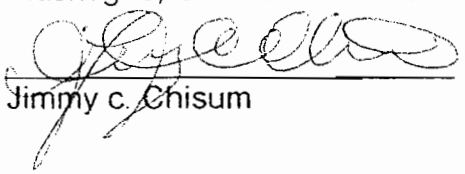
Respectfully submitted this 2nd day of November, 2005; in Jesus name and for his glory; all rights reserved and all liberties defended.



Jimmy Clayton Chisum, Pro Per

CERTIFICATE OF SERVICE;

I, Jimmy C. Chisum hereby certify that I have cause the service of a copy of this foregoing Judicial Notice upon the Plaintiff by first class mail, Postage paid and addressed to Jeffrey Gallant, Asst. Us Attorney; 1200 w. Okmulgee St. Muskogee, Oklahoma 74401 this 2nd day of November, 2005



Jimmy c. Chisum

United States District Court in and for the Eastern District of Oklahoma

United States of America	)	
Plaintiff	)	**Case No. CR 05-43 WH**
	)	
v.	)	**Judicial Notice 2**
	)	**Starre Decisis**
Jimmy C. Chisum	)	**Case History on Income**
Defendant Pro Per	)	**and taxation**
	)	

Defendant moves the court to take Judicial Notice of the united States Constitutional provisions on taxation as decided by the United States Supreme Court, whom this court is bound to follow as starre decisis.

Factual Background

United States Constitution; Article 1, sec. 2, "Representatives and direct taxes shall be apportioned among the several States which may be included in this union, according to their respective Numbers..." and in Article 1, sec. 9, "No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken."

United States v. Lee, 106 U.S., at 220

> ***"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.".***

Knowlton v. Moore, 178 US 41, 47 (1900).

> ***"Direct Taxes bear upon persons, upon possession and the enjoyment of rights; Indirect Taxes are levied upon the happening of an event."***

The Code of Federal Regulations cites direct and indirect taxes in 19 CFR 351.102 **Definitions:**

> ***Direct tax. ``Direct tax" means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.***

> ***Indirect tax. ``Indirect tax" means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.***

Butcher's Union Co. v. Cresent City Co., 111 US 746 (1884).

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him."

"... using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before or hindered in their lawful trade,' All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain persons from getting an honest livelihood, and put it in the power of the grantees to enhance the price of commodities. They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment." Butcher's Union Co. v. Cresent City Co., 111 US 746, 756 (1884).

HALE v. HENKEL. 201 U.S. 43 at 89 (1906):

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no duty to the State, since he receives nothing therefrom, beyond the protection of his life and property.

"His rights are such as existed by the Law of the Land (Common Law) long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution.

"He owes nothing to the public so long as he does not trespass upon their rights."

Pollock vs. Farmers' Loan and Trust Co., 157 US 429, 582 (1895).

592 "Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states."

556 "Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises."

573 "From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution

and those who adopted it; (2) that, under the state system of taxation, all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems..."
595 "The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my Judgment, by this arbitrary discrimination, the whole legislation.".

TRUAX v. CORRIGAN, 257 U.S. 312, 348 (1921).
"That the right to conduct a lawful business, and thereby acquire pecuniary profits, is property, is indisputable."

Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720, 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..."

MEYER v. STATE OF NEBRASKA, 262 U.S. 390, 399 (1923):
"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Slaughter-House Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co ., 111 U.S. 746 , 4 Sup. Ct. 652; Yick Wo v. Hopkins, 118 U.S. 356 , 6 Sup. Ct. 1064; Minnesota v. Bar er, 136 U.S. 313 , 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578 , 17 Sup. Ct. 427; Lochner v. New York, 198 U.S. 45 , 25 Sup. Ct. 539, 3 Ann. Cas. 1133; Twining v. New Jersey 211 U.S. 78 , 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219 U.S. 549 , 31 Sup. Ct. 259; Truax v. Raich, 239 U.S. 33 , 36 Sup. Ct. 7, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U.S. 590 , 37 Sup. Ct. 662, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357 , 38 Sup. Ct. 337, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312 , 42 Sup. Ct. 124; Adkins v. Children's Hospital (April 9, 1923), 261 U.S. 525 , 43 Sup. Ct. 394, 67 L. Ed. --; Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147."

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

Tyler et. al., Administrators v. United States, 281 US 497, 502 (1930)].
"A tax laid upon the happening of an event, as distinguished from its tangible, is an Indirect Tax which Congress undoubtedly may impose." [

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

"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable."

FLINT v. STONE TRACY CO., 220 U.S. 107, 165 (1911), **this is also stated:**

"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. See, in this connection, Maine v. Grand Trunk R. Co. 142 U.S. 217 , 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163, as interpreted in Galveston, H. & S. A. R. Co. v. Texas, 210 U.S. 217, 226 , 52 S. L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638."

The Sixteenth Amendment states:

"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."

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

"... the contentions under it (the 16th Amendment), if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. ... This result, instead of simplifying the situation and making clear the limitations on the taxing power ... would create radical and destructive changes in our constitutional system and multiply confusion."

The **1954 House Discussion** on Code section 61(a) of the 1954 Internal Revenue Code states: ***"This definition is based upon the 16th Amendment and the word 'income' is used in its constitutional sense." "This section corresponds to section 22 (a) of the 1939 Code."***

MERCHANT'S LOAN & TRUST CO. v SMIETANKA, 255 US 509 (1921),

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation."

In U S v. WHITRIDGE, 231 U.S. 144, 147 (1913), the Court ruled:

"As repeatedly pointed out by this court, the corporation tax law of 1909- enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment-imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income. It was enacted in view of the decision of this court in Pollock v. Farmers' Loan & T. Co. 157 U.S. 429 , 39 L. ed. 759, 15 Sup. St. Rep. 673, 158 U.S. 601 , 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law (act of August 27, 1894, 28 Stat. at L. chap. 349, pp. 509, 553, 27 etc. U. S. Comp. Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."

POLLOCK v FARMERS' LOAN & TRUST CO., 157 US 429 (1895) made the following rulings:

Quoting the Constitution – "No capitation, or other direct, tax shall be laid, unless in proportion to the census...." We discussed this previously.

"If", ruled Chief Justice Marshall, "both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case." And the Chief Justice added that the doctrine "that courts must close their eyes on the constitution, and see only the law, would subvert the very foundation of all written constitutions."

"...that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated." Second, "That the law is invalid, because imposing indirect taxes in violation of the constitutional requirement of uniformity, and therein also in violation of the implied limitation upon taxation that all tax laws must apply equally, impartially, and uniformly to all similarly situated."

"As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows." And "If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property."

Taxation Key, West 53 – "The legislature cannot name something to be a taxable privilege unless it is first a privilege."

Taxation Key, West 933 – "The Right to receive income or earnings is a right belonging to every person and realization and receipts of income is therefore not a "privilege that can be taxed".

FLINT v STONE TRACY, 220 US 107, 151-152, (1911):

"Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."

In U S v. WHITRIDGE, 231 U.S. 144, 147 (1913), the Court ruled:

"As repeatedly pointed out by this court, the corporation tax law of 1909- enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment-imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income.

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

"The Corporation Excise Tax Act of August 5, 1909, was not an income tax law, but a definition of the word 'income' was so necessary in its administration..."

"It is obvious that these decisions in principle rule the case at bar if the word 'income' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific v Lowe..., where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When we add to this, Eisner v Macomber...the definition of 'income' which was applied was adopted from Stratton's Independence v Howbert, supra, arising under the Corporation Excise Tax Act of 1909... there would seem to be no room to doubt that the word must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now become definitely settled by decisions of this Court."

STRATTON'S INDEPENDENCE, LTD. v HOWBERT, 231 US 399, 414-415, (1913):

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, with certain qualifications prescribed by the act itself."

"Moreover, the section imposes ' a special excise tax with respect to the carrying on or doing business by such corporation,' etc..."
"Corporations engaged in such business share in the benefits of the federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business."
"... the annual gains of such corporations are certainly to be taken as income for the purpose of measuring the amount of the tax."

EVANS v GORE, 253 US 245 (1920):

"If the tax in respect of his compensation be prohibited, it can find no justification in the taxation of other income as to which there is no prohibition; for, of course, doing what the Constitution permits gives no license to do what it prohibits."
"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

BOWERS v. KERBAUGH-EMPIRE CO., 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."

DOYLE v. MITCHELL BROS. CO. , 247 U.S. 179, 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."

FLORA v US, 362 US 145 (1960):

"Our system of taxation is based upon voluntary assessment and payment, not upon distraint."

STANTON v BALTIC MINING CO., 240 US 103 (1916):

"Not being within the authority of the 16th Amendment, the tax is therefore, within the ruling of Pollock... a direct tax and void for want of compliance with the regulation of apportionment."
"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation.."
"...it was settled in Stratton's Independence... that such tax is not a tax upon property... but a true excise levied on the result of the business.."

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

"...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."
"...the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source..."
"...on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation."

TAFT v. BOWERS, 278 U.S. 470, 481 (1929):

"Under former decisions here the settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income."

PECK v LOWE, 247 US 165 (1918):

"As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."

EISNER v MACOMBER, 252 US 189 (1920):

"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."
"As repeatedly held, this did not extend the taxing power to new subjects..."
"...it becomes essential to distinguish between what is and is not 'income', as the term is there used.."
"...we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909...(Stratton's and Doyle)"

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

"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

COPPAGE v. STATE OF KANSAS, 236 U.S. 1, 23 -24 (1915):

"The court held it unconstitutional, saying: 'The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates."

MERCHANT'S LOAN & TRUST CO. v SMIETANKA, 255 US 509 (1921)

"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):

"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

Helvering v. Edison Brothers' Stores 8 Cir. 133 F2d 575 (1943):

"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

Southern Pacific Co. v. Lowe, 247 U.S. 330, 335 (1918):

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

U.S. v. Ballard, 535 F2d 400: 1976

"Gross income and not 'gross receipts' is the foundation of income tax liability...": ***"The general term 'income' is not defined in the Internal Revenue Code."***

"... 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources." (For illustrative purpose, suppose you worked for an employer and received wages for producing widgets, and shortly after you began working there, there was a fire, destroying all the widgets that you had produced. Thereafter, the company went out of business, and it is obvious that there was no "gross income" under this Ballard ruling, because there were no sales.)

EISNER v MACOMBER, 252 US 189, 206 (1920):

"In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

Dwight E. Avis, Head of the Alcohol, Tobacco, and Firearms Bureau of Internal Revenue testified under oath before Congress (2/3/53 – 2/13/53):

> ***"Let me point this out now. This is where the structure differs. Your income tax is a 100% voluntary tax and your liquor tax (A.T.F.) is a 100% enforced tax. Now the situation is as different as night and day. Consequently, your same rules simply will not apply."***

Connally v General Construction Co., 269 US 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.").***

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."***

UNITED STATES v. MERSKY, 361 U.S. 431 (1960).

> ***"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... When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute."***

CALIFORNIA BANKERS ASSN. v. SHULTZ, 416 U.S. 21 (1974).

> ***"...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."***

CHRYSLER CORP. v. BROWN, 441 U.S. 281 (1979) ***[Footnote 23] There was virtually no Washington bureaucracy created by the Act of July 1, 1862, ch. 119, 12 Stat. 432, the statute to which the present Internal Revenue Service can be traced.***

Economy Plumbing and Heating Co. v. United States, 470 F. 2d 585 (1972)

> ***"The revenue laws are a code or system in regulation of tax assessment and collection.*** **They relate to taxpayers, and not to nontaxpayers. The latter are without their scope.** ***No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law.*** **With them [nontaxpayers] Congress does not assume to deal,** ***and they are neither of the subject nor of the object of the revenue laws".*** **[emphasis added]**

Federal Crop Insurance Corp. v Merrill, 332 US 380, 384 (1947)

> ***"Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e.g., Utah Power & Light Co. v. United States, 243 U.S. 389, 409 , 391; United States v. Stewart, 311 U.S. 60, 70 , 108, and see, generally, In re Floyd Acceptances, 7 Wall. 666."***

Relief Sought

Judicial Notice recognizing stare decisis from the United States Supreme Court as the Governing Authority; and In law as the appropriate nature of the case for the native natural citizen at home.

Respectfully; all rights reserved

Jimmy C. Chisum, Defendant
In propria persona

Certificate of Service;

Defendant hereby certifies that a copy of Judicial Notice 2 has been sent to the Plaintiff by first class mail, postage paid and addressed to Jeff Gallant, AUSA, US Attorney, 1200 W. Okmulgee, Muskogee, Oklahoma, 74401.

Jimmy C. Chisum

11/12/05
date mailed

United States District Court in and for the Eastern District of Oklahoma

United States of America Plaintiff	)	**Case No. CR 05-43 WH**
v.	)	**Judicial Notice 1 Common Law Nature for Propria Persona**
Jimmy C. Chisum Defendant Pro Per	)	

Defendant moves the court to take Judicial Notice of the Declaration of Independence, Constitution of the United States, Article III thereof, Public Records of Maricopa County Arizona (1988 Attached), stare decisis of Supreme Court; and further moves the court to take judicial notice of its In Law nature.

Factual Background

1. In a hearing on September 22, 2005 the Court stated "I do not answer Questions, I ask them"; and thereby refused to inform the defendant of the nature of the cause and jurisdiction of the court.

2. All men are created equal and endowed by their creator with certain unalienable rights. "That to secure these rights governments are instituted among men, drawing their just powers form the consent of the governed".

3. Defendant is a Native Born American deriving his liberties from his standing as a child of God allegiant to one master, almighty God, and his common law jurisdiction from the state of his nativity as one of We the People who institutes government for his just needs; Declaration and Article IV.

4. Common Law is the foundational nature of law of the several states derived from the people out of the Liberties granted by almighty God. At Law or

In Law is how the United States Constitution acknowledges the foundational liberties or rights of the people who created it.

5. Article III and the Statutes creating EDOK limit its jurisdiction as does case history to specific territorial limitations and only 3 possible form.

6. Article 1 Section 10 Clause 1 expressly prohibits IRS agents from impairing the obligations of contract.

7. Defendant was denied an acknowledgment of the nature of the accusation and court and has determined the nature of the Jurisdiction and case to be Common Law, also known as At Law or In Law as stated in Article III.

> ***Propria Persona;*** *(Latin; in his own person) It is a rule in pleading that pleas to the jurisdiction of the court must be pled* ***in propria persona,*** *because if pleaded by an attorney they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction.* Lawes plead. 91 ... Bovier Law Dictionary 1859

8. The Uniform Commercial Code provides a method for the People to give notice to the political government and courts of the reservation of rights at Common Law. ARS 47- 1207; ARS 47- 1103

9. Defendant has made reservation of rights, and published the record of reservation in the Public record of Arizona, widely published the reservation and repeatedly asserted the reservation in correspondence with all branches and levels of government. Exhibits 1-5 attached

"...jurisdiction of the Courts of the United States means a law providing in terms of revenue; that is to say, a law which is directly traceable to the power granted to Congress by '8, Article I, of the Constitution, 'to lay and collect taxes, duties, imposts, and excises.'" US v Hill, 123 US 681, 686 (1887).

"Where jurisdiction is challenged, it must be proven... The law requires proof of jurisdiction to appear on the proceedings... Jurisdiction may never be assumed, it

to execute his office; even to the acknowledgment of accuses due process right at Propria Persona instead of pro se waiving jurisdiction.

Relief Sought

Judicial Notice recognizing Article III as the Governing Authority; and In law as the appropriate nature of the case for the native natural citizen in his proper person at home.

Respectfully; all rights reserved

Jimmy C. Chisum, Defendant
In propria persona

Certificate of Service;

Defendant hereby certifies that a copy of Judicial Notice 1 has been sent to the Plaintiff by first class mail, postage paid and addressed to Jeff Gallant, AUSA, Us Attorney, 1200 W. Okmulgee, Muskogee, Oklahoma, 74401.

Jimmy C. Chisum

11/2/05
date mailed

AFFIDAVIT (AF) 88 243780

AFFIDAVIT OF REVOCATION AND RESCISSION

I, Jimmy C. Chisum, of 9th Judicial District, 3310 W. Bell Rd. #1008, Phoenix, AZ, being duly sworn and affixing my signature to this document, do hereby make the following statement of fact, and affirm:

1. That I was unaware that a completed, signed, and submitted "Form 1040" or "income tax return" and a "W-4" "Employee's Withholding Allowance Certificate", the authorization document that allows an employer to withhold a worker's money from his pay, are voluntarily executed instruments which could be used as prima facie evidence against me in criminal trials and civil proceedings to show that I had voluntarily waived my constitutionally secured rights and that I had voluntarily subjected myself to the federal income/excise tax, to the provisions of the Internal Revenue Code, and to the authority of the Internal Revenue Service (hereafter referred to as the IRS) by signing and thereby affirming under penalty of perjury that I was in effect a "person" subject to the tax.

2. That I was unaware of the legal effects of signing and filing an income tax return as shown by the decision of the United States Court of appeals for the 9th Circuit in the 1974 ruling in the case of Morse v. U.S., 494 F2d 876,880, wherein the Court explained how a citizen became a "taxpayer" by stating: "Accordingly, when returns were filed in Mrs. Morse's name declaring income to her for 1944 and 1945, and making her potentially liable for the tax due in that income, she became a taxpayer within the meaning of the Internal Revenue Code." Emphasis added.

3. That I was unaware that the signing and filing of an income tax return and other IRS forms are acts of voluntary compliance for a free sovereign individual citizen; that I was unaware that in a court of law the completed IRS documents can become prima facie evidence sufficient to sustain a legal conclusion by a judge that the signer has voluntarily changed his legal status from that of a free sovereign individual citizen who is not subject to any federal tax and who possesses all of his God-given Constitutionally secured rights when dealing with government, to the legal status of a "taxpayer" (any individual, trust, estate, partnership, association, company or corporation subject to a federal excise tax,) a "person" who is subject to a federal excise tax and is therefore subject to the authority, jurisdiction and control of the federal government under Title 26 of the United States Code, the statutes governing federal taxation and to the regulations of the IRS, thereby imposing the tax on himself and waiving his God-given Constitutionally secured rights in respect to the federal income/excise tax statutes and their administration by the IRS and establishing himself as one who has privileges only, but no rights in dealings with the IRS, the same as a corporation; that it is my understanding that the change of status resulting from the signed IRS documents is very similar to the change of status that occurs when one enlists in the military service and voluntarily takes an oath that subjects him to the authority, jurisdiction and control of the federal government under Title 10 of the United States Code, the statutes governing the armed forces and the regulations of the military service, thereby waiving his Constitutional rights in relation to dealings with the military services.

4. That my attention has recently been directed to the fact that an official Internal Revenue Service form letter (FL 1264) states: "(T)he fact that you sent us [IRS] this Form 1040 shows that you recognize your obligation to file..."; that it has never been my intention or desire to show the Internal Revenue

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Service or anyone else that I recognize any such obligation; that as a freeman I legally do not have such an obligation.

5. That I am a natural born free sovereign United States citizen, a freeman and I am endowed by my Creator with numerous inalienable rights including my rights to "life, liberty, and the pursuit of happiness," which rights are specifically identified in the Declaration of Independence and protected by the United States Constitution; that my birthright to "pursuit of happiness" has been interpreted by both the framers of the Constitution and the U.S. Supreme Court as including my inalienable right to contract, to acquire, to deal in, to sell, rent, and exchange properties of various kinds, real and personal, without requesting or exercising any privilege or franchise from government; that I have learned that these inalienable property rights also include my right to contract for the exchange of my labor-property for other properties such as wages, salaries, and other earnings, that I have never knowingly or intentionally waived any of these inalienable rights.

6. That I understand that if the exercise of rights were subjected to taxation, the rights could be destroyed by increasing the tax rates to unaffordable levels; therefore courts have repeatedly ruled that government has no power to tax the exercise of any rights of citizens, as shown by the U.S. Supreme Court in the case of Murdock v. Penna., 319 U.S. 105 (1943) which stated: "A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

7. That for years past I have been influenced by numerous and repeated public warnings made by the IRS via radio, television, the printed press and other public communication media warning of the "deadline" for filing a "Form 1040 Income Tax Return" and/or other IRS forms and documents.

8. That in addition to the aforesaid warnings, I have also been influenced by misleading and deceptive wording of IRS publications, IRS-generated news articles, the pressure of widespread rumors and misinformed public opinion, and the advice and assurances of lawyers, C.P.A.'s and income tax preparers which misled me to incorrectly believe that the 16th Amendment to the United States Constitution authorized Congress to impose a direct tax on me, my property, my exchanges of property and/or property received as a result of exercising my constitutionally secured right to contract; that I was further misled into believing I had a legal duty and obligation to file a "Form 1040 Income Tax Return", a "Form W-4 Employee's Withholding Allowance Certificate" and/or other IRS forms and documents.

9. That I have also been further influenced, misled and alarmed by rumors, misinformed public opinion and the advice and assurance of lawyers, C.P.A.'s and income tax preparers to the effect that "the IRS will get you," and that it would be a crime punishable by fine and/or imprisonment if I did not fill out, sign and file with the IRS a "Form 1040".

10. That in addition to all of the reasons stated in paragraphs 7, 8, and 9 above, I was influenced by the common and widespread practice of employers who either knowingly or unknowingly mislead their employees to believe that they are all subject to withholding of "income taxes" from their earnings, either with or without their permission, based upon the employers' possible mistaken assumption that they, as employers, are required by law to withhold "income taxes" from the paychecks of their employees.

11. That I have also been influenced and impressed by the

IRS's annual public display and indiscriminate offering of large quantities of the "Form 1040" in banks, post offices, and through the U.S. mail which also reminded me of and induced me to respond by filling out, signing, and sending to the IRS a "Form 1040".

12. That said "Form 1040" contained no reference to any law or laws which would explain just exactly who is or is not subject to or liable for the income tax, nor did it contain any notice or warning to anyone that merely sending said completed "Form 1040" to the IRS would waive my right to privacy secured by the 4th Amendment and my right to not having to be a witness against myself secured by the 5th Amendment to the United States Constitution, and that the "Form 1040" would in itself constitute legal evidence admissible in a court of law, that the filer is subject to and liable for the income/excise tax even though and regardless of the fact that I, as a free individual, am actually and legally not subject to or liable for any income/excise tax and have no legal duty or obligation whatsoever to complete and file a "Form 1040."

13. That at no time was I ever notified or informed by the IRS, by any of its agents, or employees, nor by any lawyer, C.P.A., or tax preparer of the fact that the 16th Amendment to the United States Constitution, as correctly interpreted by the U.S. Supreme Court in such cases as Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916) and Stanton v. Baltic Mining Co., 240 U.S. 103 (1916) identified the income tax as an indirect excise tax in accordance with Article 1, Section 8, Clause 1 of the United States Constitution, and that the 16th Amendment does not authorize a tax on individuals.

14. That at no time was I ever notified or informed by the IRS, its agents, or employees, nor by any lawyer, C.P.A., or tax preparer of the fact that because of various rulings of the U.S. Supreme Court in such cases as Flint v. Stone Tracy Co., 220 U.S. 107 (1911), and Pollock v. Farmer's Loan and Trust Co., 157 U.S. 492 (1895), the indirect excise tax on incomes identified by the 16th Amendment is actually a tax upon corporation privileges granted by government and measured by the amount of corporate income (see Corporations Tax Act, Statutes at Large, 1909, vol. XXXVI, section 38, page 112); that this excise tax may also be imposed on certain other privileges provided by government and measured by income; that such occupations of privilege include attorneys [see Springer v. U.S., 102 U.S. 586 (1881)]; that this excise tax may also be imposed upon criminal gains or profits.

15. That my attention has been called to Report No. 80-19A, titled "Some Constitutional Questions Regarding the Federal Income Tax Laws" published by the American Law Division of the Congressional Research Service of the Library of Congress, updated January 17, 1980; that this publication described the tax on "income" identified in the 16th Amendment of the United States Constitution as an indirect excise tax; that this report stated: "The Supreme Court, in a decision written by Chief Justice White, first noted that the 16th Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the United States Constitution, quoted above.", and further stated: "Therefore, it can clearly be determined from the decisions of the United States Supreme Court that the income tax is an indirect tax, generally in the nature of an excise tax," thus proving in my mind that the "income tax" is not a tax on ME as an individual, but is rather a tax as described by the U.S. Supreme Court in Flint v. Stone Tracy Co., 220 U.S. 107 (1911), wherein the court defined excise taxes as "... taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.", none of which classifications apply to

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ME.

16. That I was unaware of the truth of the IRS's rarely publicized statement that the "income" tax system is based upon "voluntary compliance with the law and self-assessment of tax"; that it has never been my intention or desire to voluntarily self-assess an excise tax upon myself; that I always thought that compliance was required by law.

17. That I have examined sections 6001, 6011, 6012, 7203, and 7205 of the Internal Revenue Code (Title 26 U.S.C.) and I am convinced and satisfied that I am not now, and never was any such "person" or individual referred to by these sections.

18. That after careful study of the Internal Revenue Code and consultations on the provisions of the Code with lawyers, tax accountants, and tax preparers, I have never found or been shown any section of the Internal Revenue Code that imposed any requirement on ME as a free sovereign unprivileged individual to file a "Form 1040 Income Tax Return", or that imposed a requirement upon me to pay a tax on "income," or that would classify me as a "person liable," a "person made liable," or a "taxpayer," as the term "taxpayer" is defined in 26 U.S.C. Section 7701 (a) (14) which states: "The term 'taxpayer' means any person subject to any internal revenue tax."

19. That after the study and consultations mentioned in paragraph 18, the only mention of any possible requirement upon ME, as an individual, to pay a tax on "income" that I could find or was shown in 26 U.S.C. was the title of Part I under Subtitle A, Chapter 1, Subchapter A, which is deceptively titled "Tax on Individuals;" that a careful study and examination of this part of the Code showed no provision in the body of the statutes imposing any liability or requirement upon me as an individual for payment of a federal excise tax on "income;" that my study and consultations mentioned in paragraph 18 showed that the law is determined by the actual wording contained in the body of a statute, and not by the title; that the title of a statute is merely a general guide to the contents of the statute, and the title has no force or effect at law.

20. That after study and consultations mentioned in paragraph 18, my attention was called to Internal Revenue Code Chapter 21 titled "Federal Insurance Contributions Act" (social security), to Subchapter A of Chapter 21 titled "Tax on Employees," which includes Section 3101 wherein the (social security) tax is identified as a tax on "income," not as an "Insurance Contribution," and not as a "Tax on Employees," or on wages or earnings; that my attention was further called to these facts: There is no provision in the Code that imposes the tax on employees or requires them to pay the tax; a voluntarily signed completed "W-4 Employee's Withholding Allowance Certificate" allows an employer to withhold money from a worker's pay for (social security) "income" tax, even though the worker has claimed on the form to be "exempt" from the graduated "income" tax; an employer has no authority to withhold money from a worker's pay for the (social security) "income" tax, the graduated "income" tax, or any IRS imposed penalty or assessment if there is no voluntarily signed "W-4" form in force.

21. That after the study and consultations described in paragraph 18, my attention was called to Section 61 (a) of the Internal Revenue Code which lists items that are sources of "income" and to these facts: that I.R.S. Collection Summons Form 6638 (12-82) confirms that these items are sources, not "income," by stating that the following items are "sources": "wages, salaries, tips, fees, commissions, interest, rents, royalties,

alimony, state or local tax refund , pensions, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money).", that sources are not income, but sources become "income" if they are entered as "income" on a signed "Form 1040" because the signer affirms under penalty of perjury that the items entered in the "income" section of the "Form 1040" are "income" to the signer; that Section 61 (b) clearly indicates which Sections of the Code identify and list items that are included in "income" by stating: "For items specifically included in gross income, see Part II (sec. 71 and following)."

22. That my attention was then called to the said Part II, titled: "Items Specifically Included in Gross Income;" that I studied sections 71 through 87 and noticed that wages, salaries, commissions, tips, interest, dividends, pensions, rents, royalties, etc., are not listed as being included in "income" in those sections of the code; that, in fact, those items are not mentioned anywhere in any of these sections of the Internal Revenue Code.

23. That after further study it appears clear to me that the only way that property received by me as a free, sovereign, unprivileged individual in the form of wages, salaries, commissions, tips, interest, dividends, rents, royalties, and/or pensions could be, or could have been legally considered to be "income" is if I voluntarily completed and signed a "Form 1040 Income Tax Return," thereby affirming under penalty of perjury that information on the "Form 1040" was true and correct, and that any amounts listed on the "Form 1040" in the "income" block are "income," thereby acknowledging under oath that I am, or was subject to the tax and have, or had a duty to file a "Form 1040 Income Tax return" and/or other IRS forms, documents, and schedules, none of which instruments I have ever signed with the understanding that they were voluntarily signed.

24. That with reliance upon the aforementioned U.S. Supreme Court rulings and upon my constitutionally protected 5th and 9th Amendment rights to lawfully contract, to work, and to lawfully acquire and possess property, I am convinced and satisfied that I am not now, nor was I ever subject to, liable for, or required to pay any income/excise tax, that I am not now and never was a "taxpayer" as the term is defined and used in the Internal Revenue Code, and that I have never had any legal duty or obligation whatsoever to file any "Form 1040" or make any "income tax return," sign any "Form W-4 Employee's Withholding Allowance Certificate," or other Internal Revenue forms, submit documents or schedules, pay any income tax, keep any records, or supply any information to the IRS.

25. That both the U.S. Congress and the IRS, by deceptive and misleading words and statements in the Internal Revenue Code, as well as IRS publications and IRS-generated news articles committed constructive fraud by misleading and deceiving me, as well as the general public, into believing that I was required to file "Form 1040 Income Tax Returns," "Form W-4 Employee's Withholding Allowance Certificates," and other IRS forms, documents, and schedules, and also to keep records, supply information, and to pay income taxes.

26. That by reason of the aforestated facts, I do hereby exercise my rights as a free sovereign U.S. citizen, upheld by various court decisions to revoke, rescind, cancel and to render null and void, both currently and retroactively to the time of signing, based upon the constructive fraud perpetrated upon me by the U.S. Congress and the Internal Revenue Service, all "Form 1040 Income Tax Returns," all "Form W-4 Employee's Withholding

Allowance Certificates," all other IRS forms, schedules, and documents ever signed and/or submitted by me, and all my signatures on any of the aforementioned items, to include the "SOCIAL SECURITY" account, bearing the account number 441-44-6060; that this revocation and rescission is based upon my rights in respect to constructive fraud as established in, but not limited to the cases of Tyler v. Secretary of State, 184 A.2d 101 (1962), and also El Paso Natural Gas Co. v. Kysar Insurance Co., 605 Pacific 2d. 240 (1979) which stated: "Constructive fraud as well as actual fraud may be the basis of cancellation of an instrument."

27. That further, I do hereby declare that I am not and never was a "taxpayer" as that term is defined in the Internal Revenue Code, a "person liable" for any Internal Revenue tax, or a "person" subject to the provisions of that Code, and declare that I am, and have always been, a "nontaxpayer"; that courts have recognized and acknowledged that individuals can be nontaxpayers, "... for with them Congress does not assume to deal and they are neither of the subject nor of the object of revenue laws...", as stated by the Court in Long v. Rasmussen, 281 F. 236 (1922), and also Delima v. Bidwell, 182 U.S. 176, 179 and Gerth v. United States, 132 F. Supp. 894 (1955).

I now affix my signature to these affirmations:

Affirmant (Seal)

Subscribed and sworn to before me, a Notary Public, of the State of Arizona, County of Maricopa, this 19th day of May, 1988.

Notary Public

My Commission Expires On:

OFFICIAL SEAL
SHERRY L. BECKETT
NOTARY PUBLIC ARIZONA
MARICOPA COUNTY
My comm. expires May 1, 1992

NOTICE OF REPENTANCE AND FORGIVENESS 88 243781

We must forgive in order to be forgiven (Mt 6:14; Mk 11:25; Eph 4:32). In the Spirit of Truth, Love, Understanding and Forgiveness, I this day proclaim Liberty (Is 61:1; Ro 8:21; 2Cor 3:17; Jas 1:25), and release from Bondage (2Pet 2:19).

As notice to my fellow man, (brethren, strangers and heathen) I bear no ought against any man nor hold any grudge against a brother for the One Living GOD in Heaven, The I AM THAT I AM is able to judge, bear witness and pour out wrath in anger as is needed.

When we repent we become dead to sin (1Pet 2:24; Ro 6:[illegible]) and are reborn alive unto God.

One of the great follies of the nations is the anti-Christ idolatry of being in bondage with mans government built up to be our false gods, sworn to serve men not GOD. We should obey GOD rather than man (Ac 5:29).

In my forgiveness in order to be forgiven I have forgiven man for their trespasses, sins, debts, and violations against me, that I am now free in the law of Perfect Liberty, alive unto GOD; in the world but not of it (Jn 8:23; 17:14,16; 1Jn:4,5) freed from all bondage by the spirit of GOD.

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In all things I have forgiven man including his trespasses of attempting to set himself up as a god over me, charging me usury, blasphemy against GOD, falsehoods, frauds, false accusations, illegal and unlawful conduct, counterfeiting, all in all.

I forgive the united States Government and its emissaries of their attempts; through false accusation, titles of nobility, oaths, illegal contracts violating GODS law, my GOD-given Rights, the Constitution of the united States, and its own codes and laws; to subject and enslave me in mans false anti-CHRIST bondage.

I forgive the Internal Revenue Service and all its agents and assigns of the frauds and attempted thefts committed against me, my GOD-given, unalienable rights, and guarantees in the Constitution and laws for their protection. I bear no one malice but must stand in Truth and Love, Obedient to GOD not man.

I forgive the State of Arizona and its emissaries of the attempts through false accusation, oaths, illegal contracts, violating Gods Law, perversions of truth, violations of my GOD-given Rights protected by the Constitution of the united States and the Republic of Arizona and its own laws and codes, to subject and enslave me in mans false anti-CHRIST bondage.

I forgive the City of Phoenix, its police department, and

court system as well as all its bureaucracy of their attempts to make me subject to them not as Christian public servants of the people but in titles of nobility as principalities and powers outside their GOD-given authorities.

In simple declaration, governments are instituted among men to protect and preserve the rights granted us by our Creator and are responsible to the governed for so doing. It is only thru the permission of the governed that government has any authorization to do or say anything and I do not grant any government dominion over me as a god or idol. I am subject to only one The only True Soveriegn in Love and Forgiveness so to declare for now and all times.

GOD is my provider and I will not allow my government to steal from that provision.

I am forgiven and remitted by GOD the only True Living God of Heaven and Earth and answerable only unto him. I am reborn in him by the Spirit to a new life with him. Where the Spirit is there is liberty.

I am bound to serve GOD not man and all mans bondage (yokes) are cast off as the yoke of the Lord is accepted. (Mt 11:28-30; Ac 15:10; Gal 5:1).

I have repented of my sinful participation in ungodly, usury, social security, income taxes, borrowing and lending

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	Case Number CR-05-43-WH
	)	
JIMMY C. CHISM,	)	
	)	
Defendant.	)	

****

TRANSCRIPT OF PRETRIAL CONFERENCE heard on 9-22-05 before the Honorable Ronald A. White, United States District Judge.

****

A P P E A R A N C E S

For the United States:	MR. JEFFREY A. GALLANT U.S. Attorney's Office Muskogee, OK
For the Defendant:	MR. JIMMY C. CHISM Pro Se New River, CO
Stand-by Attorney:	MR. STEPHEN J. KNORR Attorney at Law Tulsa, OK
Reported By:	MS. SHANNON L. FLORES P.O. Box 1350 Muskogee, OK 74401

SEPTEMBER 22, 2005

THE COURT: Okay, we are on the record in CR-05-43, United States of America versus Jimmy C. Chism. Mr. Jeff Gallant is present for the Government. Mr. Steve J. Knorr appears, am I pronouncing that correctly?

MR. KNORR: Yes.

THE COURT: Is present as standby-appointed counsel for Mr. Chism. Mr. Chism is here representing himself.

We are here for a pretrial conference. We have a number, to put it mildly, a number of motions to take up. I am going to go through them in the order that I put them in for my own convenience. I hope it makes some sort of sense, but I don't guarantee that.

The first motion we will take up is the Government's Motion for Hearing to Determine Whether Defendant has Voluntarily, Knowingly, and Intelligently Waived His Right to Counsel.

Mr. Gallant, do you have anything to add to what you filed with the Court?

MR. GALLANT: No, Your Honor.

THE COURT: Mr. Chism, you have not responded to this motion. What would like to say with regard to the motion?

MR. CHISM: Your Honor, before you proceed

to the motion, there is a motion before this Court to dismiss the indictment and warrant on the lack of subject matter jurisdiction.

THE COURT: I'm going -- when I start talking, you shut up. Is that clear?

MR. CHISM: Yes, sir.

THE COURT: Okay. Now, I'm going to go through the motions in the way that I figured out is logically the best. Okay?

So right now we are addressing the motion for hearing to determine if you have voluntarily, knowingly, intelligently waived your right to counsel. I think it makes more sense to determine that before we get to the other substantive motions.

So do you have anything to add with respect or anything you would like to say with respect to that motion by the Government?

MR. CHISM: Your Honor, I believe I have no choice but to start from this point and ask you, first, for your oath of office, your appointment as a judge, and the nature of this proceeding.

THE COURT: Well, I'm very proud of my commission that's hanging in my office, but now is not really the time I take to show that off. So maybe some other time we can do that on more of a social basis. We

are going to proceed. I'm asking to deny your request.

I'll ask if you wish to address the motion to determine whether you voluntarily, knowingly, and intelligently waived your right to counsel?

MR. CHISM: Okay.

As I stated in the arraignment hearing, because I do not know the nature of this charge, your website for the Eastern District of Oklahoma says you're an Article Three Judge. Article Three, I find only three jurisdictions. It don't see any reason it should be very hard to get a simple answer on this. Is it a law of common, equity, or admiralty.

THE COURT: Have you ever studied law before?

MR. CHISM: I've studied law routinely.

THE COURT: Tell me about that.

MR. CHISM: Well, for the last twenty-five years I have had the need to know, and I have studied law for -- well, excuse me, twenty-four and a half years. I don't want to exaggerate. I have studied law over that entire time.

THE COURT: Have you ever studied in a formal setting like in a university?

MR. CHISM: I have not been to law school.

THE COURT: Okay, have you ever

guilty?

MR. GALLANT: Yes, I believe the maximum possible punishment would be a fine not to exceed $250,000, a sentence up to five years in prison, a supervised period following that, and a mandatory assessment of a hundred dollars.

THE COURT: Okay. You understand what Mr. Gallant said, sir?

MR. CHISM: I understood what he said. That does not tell me what the nature of the charges are. Are we at common law or in equity or in admiralty?

It makes a difference if I might need counsel.

THE COURT: Do you understand that if you were found guilty of more than one of these crimes, I can sentence you to serve them consecutively? Meaning one after the other.

Do you understand that?

MR. CHISM: I have read that in the sentencing guidelines.

THE COURT: You have heard of the sentencing guidelines?

MR. CHISM: I have heard of them.

THE COURT: You know they are advisory, but I take them into account in ordering any sentence

pointed out, the lawyers that have been practicing for fifteen years are not familiar with them. They still have problems.

THE COURT: You understand that those rules govern the way that a criminal case is tried in federal court?

MR. CHISM: In addition from my study and research that in the eyes of the Supreme Court, laws are procedures written in so complex a language that only those of learned degrees can interpret them and impose no duties -- I'm not sure what those rules impose.

THE COURT: I want to advise you, Mr. Chism, that my opinion is a trained lawyer would defend you far better than you can defend yourself. I think it is unwise to try to represent yourself. You say that you've studied the law, studied the rules. You equivocate if you're familiar with the rules, but I strongly urge you not to try to represent yourself. In light of the charges that you have heard that are pending against you, in light of the penalties that could possibly be assessed against you, in light of representing yourself, do you desire to represent yourself?

Do you desire to represent yourself and give up your Sixth Amendment right to counsel?

voluntarily, knowingly, intelligently waived his right to counsel. That is disposed of. I found that he has waived that right knowingly and voluntarily.

Now, I am proceeding on to a filing on August 22nd, 2005, titled by defendant "Notice and Demand for Nature and Cause." I don't know if this was filed as a motion. It doesn't show up on the pending notices. I don't know if it was adjudicated at the arraignment or not.

MR. CHISM: Magistrate West did not take up either of these pleadings.

THE COURT: Mr. Chism, this seems to track pretty closely with what you were asking me earlier in this hearing. Do you have anything you want to add in oral argument to your notice and demand for nature and cause?

MR. CHISM: Well, I still believe I am entitled to know the nature of the charge against me, and I still don't know it.

THE COURT: That could be because you refuse to even try to believe it or understand it. So I mean, I don't think that there is -- I see no deficiency in the way that the Government has explained it. I read the transcript of the arraignment. I have listened to the Government explain the charges here. I have read the

indictment. You know, if you don't understand, you might take my admonishment that I have previously given you that you might want to consult with counsel that's been appointed as standby for you, but that is up to you. You have the right to continue on the way you are.

Do you have anything else to add to this particular notice?

MR. CHISM: Just so it's firm in the Record then the Court is refusing to tell me which of the three jurisdictions under Article Three we are operating under.

THE COURT: Okay, so I'm going -- to the extent -- the Notice and Demand for Nature and Cause motion is denied.

Move on the Motion to Quash Indictment and Warrant for Lack of Jurisdiction.

What, if anything, would you -- I have read the Government's response. I have read the motion. What, if anything, do you want to add, Mr. Chism, to your motion to quash?

MR. CHISM: Your Honor, I believe the motion to quash in its entirety with the exhibits clearly elaborate the point and the idea of the narrow federal jurisdiction that is specifically designated by the Constitution in law, and there is -- that I can identify

no federal property and no interstate commerce involved in the Chadsey matter because it's not on federal property. It's not in interstate commerce.

Your Honor, the decisions from Lopez and Gillette (phonic) and others that were affably discussed the last week in the confirmation hearing of John Roberts for Chief Justice, I believe there is a jurisdiction problem that has not been addressed. I believe it has to be addressed. That we either have a seeded federal property, the private property of the Chadseys is either federal property or there is interstate commerce. Either one. Neither one has shown up.

I have tried to elaborate the law in the way that the -- my research has taken me over the years, and the way that others have aided me in research to elaborate the chain of history of the Supreme Court, the chain of history of the law and the detailed jurisdiction, the chain of history of the law and the detailed jurisdiction of the federal property.

The last thing that I went through and researched -- I do have copies here, if it please the Court, is from the U.S. Attorney's manual from the Department of Justice website that states this territory of the jurisdiction of the United States is reserved to reserved lands, Indian lands and seeded lands. None of

those three category describe this property that Chadsey lived, or their business was conducted, or I conduct my affairs. I believe that's all laid out accurately in the motion and the exhibits.

THE COURT: So you know, there is no authority that you can cite to me that I care less about than the U.S. Attorney's manual. So I don't consider that authority.

MR. CHISM: In addition, that --

THE COURT: I have seen the other purported authority that you attached to your motion and have examined it. Is there something other than that you want to proffer?

MR. CHISM: Can I assemble that and give it to you after the hearing? I don't have it all assembled.

THE COURT: I mean, this is the hearing on the motion.

I'm ready to rule.

MR. CHISM: Then you are fine. Go ahead.

THE COURT: I find the motion to quash -- well, I want to hear from Mr. Gallant on the -- I have a question about -- the indictment is adequate; but I want to hear from you about the -- it seems a bit ambiguous to the time period and to whether the counts are alleging

convicted twice for the same thing, and I don't think that it's his job to assert the double jeopardy defense. I think it's the Government's job to make sure that he's not convicted for the same thing twice.

MR. GALLANT: There would not be a double jeopardy concern because each charge is an individual tax year, an individual tax liability. Individual tax due and owing, for instance, in the 1997 tax year. 1998 even though it involves some of same acts of evasion, they are separate distinct counts because they relate to a separate tax due and owing?

THE COURT: Here is what I'm going to do -- don't let me forget this -- I am going to require a bill of particulars from the Government to clarify just what you have said.

MR. GALLANT: Okay.

THE COURT: What that will do, it will satisfy me that there is a not a double jeopardy problem. It will help in clarifying the nature of the charges which the defendant is complaining about. And so I am going to require that, as far as when it's going to be done by, I'll get to that later. Don't let me forget that.

MR. GALLANT: I will not.

THE COURT: So I am overruling the motion

to quash.

Similar jurisdictional challenges have been rejected by the Tenth Circuit in 920 F.2d 619 in Collins. So the jurisdiction is given to federal offenses by 18 United States Code, section 3231.

I am relatively satisfied. If I didn't have, believe me, I would punt this case in a minute. So anyway.

Next motion I want to bring up is the defendant's Motion to Dismiss Indictment for Failure to Allege a Crime.

Anything that you want to add to that, Mr. Chism?

MR. CHISM: No, sir.

I would like to go back for one second, if I may have clarification. You determined now that you have jurisdiction. Do you have jurisdiction in equity or admiralty --

THE COURT: You know, Mr. Chism, the neat thing about sitting here is that I get to pepper you with questions. You don't get to pepper me with questions. Okay?

So don't ask me that again. Do you understand?

MR. CHISM: Yes, sir.

THE COURT: Okay. Is there anything that you want to add to the motion to dismiss indictment?

MR. CHISM: May I get my copy and look at it for a minute?

THE COURT: We need you at the podium to make sure we have a good record.

MR. CHISM: I'll come back up there.

No, sir, I believe the Supreme Court authority cited is adequate.

THE COURT: Well, I respectfully disagree with the authority that you have cited. I believe the indictment does adequately allege a crime, so -- and I think this motion is basically duplicative of the last one that I adjudicated, so I'm denying it as well.

I would mention that I think that it's bordering on the frivolous.

The next motion is the Request for Findings of Facts and Conclusions of Law Used by Magistrate Judge West to Establish Jurisdiction and Enter Plea.

This is the defendant's motion. Anything that you want to add to that, Mr. Chism, that you have not already mentioned?

If you have anything else you want to add, I'll be glad to listen to it.

The Record should reflect the Court is giving time to the defendant to assemble his papers and look through them before responding.

MR. CHISM: No, Your Honor.

THE COURT: I'm going to overrule the Request for Findings of Fact and Conclusions of Law Used by Magistrate Judge West to Establish Jurisdiction and Enter Plea. The jurisdiction challenge was filed by the defendant on September 2nd, 2005. It's not well taken legally, and it's frivolous.

Next one, the Motion to Strike Plea Entered by Magistrate Judge West filed September 2nd, 2005.

Anything that you want to add to that?

I have read the transcript of the arraignment and you mentioned the intimidating and threatening attitude of the magistrate. That didn't come through in the actual transcript. Can you explain that to me?

Was she being more threatening and intimidating than me?

MR. CHISM: In one place, yes.

THE COURT: Really? But you may get there.

Okay, not to mean that, but you certainly

And that's not my name. My name is upper-lower case. That is how Momma named me.

THE COURT: Okay, the Motion to Reconsider the Identity Determined by Judge Magistrate Duncan in United States District Court of Arizona filed by the defendant on September 12th, 2005, is denied as not well taken in law and frivolous.

Okay, let me see. Now, we have the Motion for Continuance of Trial.

I understand, Mr. Gallant, the Government does not object?

MR. GALLANT: That's right, Your Honor.

THE COURT: But you would like it put on the November -- I guess, the October 31st docket?

MR. GALLANT: Obviously we defer to the convenience of the Court. We do understand the unique circumstances of this case. Do not oppose a continuance, but we think one month would be sufficient.

THE COURT: Okay, Mr. Chism, any objection to a one month continuance until the October 31st docket?

MR. CHISM: Well, I would like the two months. If the Court decides one month is more appropriate --

THE COURT: Tell me why you need two months.

local rules.

MR. CHISM: Well, I did not believe that the eleven days was adequate time to get the motions in. I filed that before the eleven days expired.

THE COURT: What other motions are you anticipating?

Are they in the same vein as the ones that I handled this morning?

MR. CHISM: I am not anticipating other motions at this time, Your Honor.

THE COURT: Okay, this is what I'm going to do. In light of the motions that have been filed to date in this case, the majority of them being frivolous, I am denying the Motion for Extension of Time to File Motions. What I will do, I will entertain any motion to reconsider that ruling if specific motions are contemplated and requested -- of course, I would probably say that I would be more favorable disposed if Mr. Knorr was joining you, Mr. Chism, in putting forth a motion or request for reconsideration because I would look favorable on that considering what I have already adjudicated in this case as far as motions. So I am open to reconsider that, but right now that motion is denied.

Moving on now to -- you can sit down for a minute, Mr. Chism. Thank you.

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
Plaintiff,)
)
VS.) NO. CR-05-43-WH
)
JIMMY C. CHISUM,)
Defendant.)

* * *

TRANSCRIPT OF PROCEEDINGS

PRETRIAL HEARING

BEFORE THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE

NOVEMBER 17, 2005

* * *

A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

COURT IN SESSION

THE COURT: We are on the record in CR-05-43, United States of America versus Jimmy Chisum. Mr. Jeff Gallant is present for the government. And who is with you, Mr. Gallant?

MR. GALLANT: Special Agent Erica Skaggs. She is the case agent.

THE COURT: I'm sorry, I forgot. You were here last time.

Representing or acting as his own lawyer is Mr. Jimmy Chisum, and he is Mr. Stephen Knorr present as back up counsel.

Thank you for coming, Mr. Knorr.

MR. KNORR: Good morning, Your Honor.

THE COURT: Let me see the order we should take some of these matters in. I think the first thing, Mr. Chisum, I want to do is your motion to add exhibits to the motion to recuse. It would seem to make sense to address that first. Is there any objection to him adding the exhibits, Mr. Gallant?

MR. GALLANT: No, Your Honor.

THE COURT: Okay. Mr. Chisum's Motion to add an exhibit to the motion to recuse, which is docket number 48, will be granted.

I suppose we should address the motion to recuse

decorum of everyone in the court and it was my feeling that with the things that were said and the way that the -- the -- my understanding of due process issues were handled and the things that went on, that you were not properly impartial and -- and I understand that you are the judge, it's your courtroom and you are supposed to be in control. I also think I understand that we all have certain rule books and rules that we are supposed to go by in all of the things we do. So those -- those things that I believe were violations perhaps do not rise to the level that you felt they did and -- so I really don't have anything to add to my paper work.

THE COURT: Okay. Can you tell me what code section you are asking for recussal under? You don't cite any legal authority, I mean, as far as how you are proceeding to -- in asking me to recuse. Are you aware of what I'm talking about?

THE DEFENDANT: I'm aware that there are specific rules on recuse, but I don't have the citation in my head.

THE COURT: Okay, okay. Let me see. What I am going to do is just perhaps a note of explanation. The way, if any, we got off on the wrong foot is when you interrupted me at the first hearing. Perhaps that's one thing that is evidence of the fact that you need a lawyer.

summing it up correctly?

THE DEFENDANT: Well, in the sense that -- yes, sir. From reading the transcript and what I heard and observed here in the Court, you instructed the prosecutor to address two specific issues, to have something to say on the nature (sic) that I have expressed such a need to have or to understand and on the double jeopardy issue and I saw nothing added by the bill of particulars to what had been said before. In fact, the issue of the 18:2, the aid and abet, and -- and again, I can only go by my reading and in my reading of that, it seems to me that the way that it was charged with four separate aid and abet counts is a duplicitus or duplicating situation because the -- there's no new acts, no different acts. There's -- everything was the same as going along routine. And so -- and the double jeopardy issue -- I felt that the 18:2 was the place where the double jeopardy was stretched or might be compounded and then the -- I understand the prosecutor's declaration that each of the subject 7201s-- that each different year, each separate tax year is a separate legal event. So that wasn't so much where I was concerned as in the -- as in the 18:2 because there was nothing said on the issue of jurisdiction or the nature of the charge that I felt you had clearly ordered.

THE COURT: Okay. I guess my memory -- and I

fine.

THE DEFENDANT: The party identification -- you know, under common law, as I understand it, when you injure a party, an injury to someone, an equity would be some form of a contract and those rules have been merged, but I don't think that anything has been abolished. So to understand, in part, how I deal with witnesses, how I deal with Mr. Gallant doing his job, I think has to do with that nature of the offense and I honestly, sir, stand before you and say I don't see an injured party and I don't see a contract. So that's a conflict in my mind and when I have a conflict in my mind, it's difficult for me to do anything other than ask a question. I have been well informed by the Court that it does not answer questions.

THE COURT: Well, Mr. Chisum, I mean, yes, I -- I do answer questions, it's just I don't have to, but I do answer questions and I try to help litigants, but that would bring me to the point of instructing you and teaching you the law. Okay? And I'm not going to do that. I can't do that because I'm not going to do that for the government, though I would like to do it for them sometimes too. So that is -- it sounds to me like you have sort of -- you have taught yourself into a quandary. I'm not being critical, but your question to me is not particularly relevant to what I do here. Okay? And I don't think it's

particularly relevant to the charges or your defense of the charges or it should be. If it is, I'm sorry, but I don't know how to -- I don't know how to help you out of that quandary. Okay? If I was -- I don't want to be flippant and I'm not being flippant, but what I would tell you is to get over that quandary. Okay? Just get over it because it's really -- I think it's in your best interest to put that little quandary out of your mind because it shouldn't affect how you defend yourself in this case.

THE DEFENDANT: Well, it -- from my point of view, it has a very large affect on how I defend my case, but maybe it only goes to the jurisdiction question. You know, as I specified, if we are at common law, then I don't see an injured party. If we are at equity, then I don't see a contract. But if the -- if, you know, the Court has informed me that it has jurisdiction and it's going to proceed, then I need to try to figure out who those parties and things are as we proceed. That's the only thing I know how to do because any of us -- well, excuse me, I shouldn't say any of us. If my mind is locked in or I see something as very important as an issue of -- in my whole view of America and law and I see that as very important, then I can't just get over it. I'm sorry, I wish I could, but I can't just get over it. When I discovered that I was the bad guy, I couldn't just get

detriment to functioning here in the real world and I -- I have certain parts of me that are that way too, but, I mean, in that respect, I'm going to have to -- I'm going to have to overrule number 42, your motion to reconsider the motion to dismiss because I think it's -- I think that issue has been resolved and I believe I have jurisdiction. If I don't, the Tenth Circuit will explain it to me and to you. Okay? And we will just move on and I'm sorry that that is resolved against you, but that's the best way -- that's the best way I can put it.

Regarding your motions for judicial notice, number 43, docket numbers 43 through 45, what would you like to tell me about those that aren't otherwise in your papers? What I'm going to tell you is that as far as taking judicial notice of laws, the constitution or even the Declaration of Independence, a motion isn't -- shouldn't be necessary for that because I'm supposed to -- every judge is supposed to -- we don't call it taking judicial notice of the laws and the constitution, but we are supposed to in a sense. Okay? So you don't have to move to ask me to do that. I'll try to do that anyway. So I think those motions are unnecessary in that regard, but to the extent you want me to take judicial notice of the laws, the statutes and case law and the constitution of the United States and the Declaration of Independence, I'm willing to

do that, I'm willing to grant those, but that doesn't mean -- well, let me -- let me back up and let you talk now.

THE DEFENDANT: Well, I -- I am well aware, Your Honor, that there is a standard that the Supreme Court sets for every judge in every court about the law. I believe that it is clear to see in those requests, those motions, that I was very frustrated and am very frustrated in the fact that what I have spent all of these years studying -- that in essence you have said I am wrong, those words don't mean that. And that is -- and even, as you say, taking judicial notice of those words, maybe they still don't mean the same thing to you they do to me. It's a good thing that we are different because if there was 20,000 in Oklahoma like J. C. Chisum, it would be a very boring place. So it's good that we are different, it's good that we are unique, it's good that we have different ideas. And this all stems from when I left the court in September, my personal feeling was the railroad had left the station. I felt and believed that I needed to do everything I could to buy a ticket or to understand where the railroad is going and the majority of my motions are directed at that, at that feeling and recovering from that feeling and getting on with an honest contest of am I guilty or not. And Mr. Knorr has spent time with me and been very deliberate to explain to me that I have got one

thing to think about and he has been very courteous and very kind and very patient and very understanding when I don't agree. So those -- I appreciate you taking judicial notice that those are words that are in law and I understand -- I believe I understand that it's entirely okay that you and I differ on their meaning.

THE COURT: Okay, good. Of course, that also -- that doesn't mean they are going to be exhibits at trial, but --

THE DEFENDANT: I understand that.

THE COURT: And I know you are familiar with the case law, so I -- there is a -- there is a case I want to tell you about. It's United States versus Willie.

THE DEFENDANT: W-I-L-L-E-Y?

THE COURT: W-I-L-L-I-E, and it's 941 F.2d, 1384, and it talks about using exhibits such as what I think you're wanting to do, using those documents as exhibits, and that case says it's okay for the judge to keep those out. You can talk about them, but those don't become exhibits.

THE DEFENDANT: No, I did not think they would become exhibits, but that --

THE COURT: Well, I just wanted to give you a --

THE DEFENDANT: That was intended more between you and I than anything else.

THE COURT: Okay.

THE DEFENDANT: I'm not trying to be a bad guy.

THE COURT: No, I understand that.

THE DEFENDANT: But I have this thing inside me that I have to do what I believe is right.

THE COURT: And I want you to do that. As long as it is within the confines of our rules and what I tell you to do, that's great. You will probably get more leeway than -- you might get more than you should. Okay?

THE DEFENDANT: No, I think I should walk out of here scot-free.

THE COURT: Well, okay, you won't get that much, at least not right now. If you get an acquittal, then you will.

Let's move on to number -- what's 46? Hold on. I don't see a 46 -- no, that's your response. Your Motion in limine, number 47, your Motion in limine requesting -- you want me to prevent the government from lying in court, making prejudicial, false or void statements about sham trusts or obligations. That's very difficult for me to do. I mean, I'm not -- that didn't come out the way I wanted it to.

THE DEFENDANT: Well, it came out the way you wanted it to, you wanted it to be truthful and they are not truthful.

THE COURT: I just -- I haven't perceived that the government has lied in court in this case. Now, their allegations are just simply allegations until there's evidence. So, I mean, those are just allegations. Okay? You may think they are incorrect, but I'm not taking them as true, they are just allegations until they are supported by other evidence that the jury believes. Okay? So I don't know how I can -- I can fashion any relief that would be satisfactory to you.

Can you tell me what exactly it is you want me to do?

THE DEFENDANT: Well, my Motion in limine follows after my response to Mr. Gallant's or -- excuse me -- Mr. Gallant's Motion in limine, the prosecutor, and some of the items -- in fact, the case items regarding my actions in an attempt to redress grievance with my government. There are the decisions out of the D.C. Circuit that the judges have immunity, the tax court judges have immunity, because the -- as the basis -- and from my understanding of their dismissal, the determination of a sham trust. And again, we are talking about the understanding of the law. My understanding of the law is that contract and trust is a property and property rights issue that the determination -- the validity of it is reserved to the courts and the states under an exclusive jurisdiction. I have only read a few thousand pages of

that, so I could be all wrong, but it's where I believe that the distinct difference is, is that the determination of a sham trust is a judicial determination. The validity of the trust and its trustee is a judicial determination and that the agents of the Internal Revenue Service or the commissioner are not vested with judicial power. So the case saying that they have determined this is -- is, I believe, a trespass upon judicial authority and -- and from that --

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THE COURT: Your arguments are getting very persuasive all of a sudden because we don't like when courts trespass on our authority. I don't know if you are right, but I'm listening. Go ahead.

THE DEFENDANT: Well, just that, you know, this has been an important topic to me for a long time and I have had occasion to study that in great detail and over great time and I have had occasion to discuss that with a number of lawyers and with a couple of judges and -- and so where it's my belief that that is -- that that would come into a realm of a void judgment of a decision that was made without authority concerning the sham nature of the trust -- because at least in the states I have specifically studied and in studying the Supreme Court's dissertation on Article I, Section 1, Clause 10 in the constitution, that I attached to one of my other motions

that was frivolous -- in studying through that, even the Supreme Court says that it's a state law issue unless the state is a party. So for that aspect, to blanket say this is a sham trust is something beyond the authority granted to agents of the Internal Revenue Service or the commissioner himself or the tax court because they are not granted that judicial power and they are not officers of the state court. The state court is the one that has exclusive jurisdiction according to the statutes in Arizona, Kansas, Oklahoma and several other states that I have studied. So that aspect of Mr. Gallant being able to make the statement, as he did in our pretrial conference, that the -- that this was a sham trust situation, I don't think that the Internal Revenue Service, which I believe is my accuser here, and what's called the United States of America -- I don't believe the Internal Revenue Service has that judicial authority.

THE COURT: Okay, I understand what you are saying now. What I would suggest is that -- you have a disagreement with them, okay, about their power to be able to do that. Okay? I don't think we can say that they are lying. Okay? They are making an assertion of law and fact that you disagree with. You are making one they disagree with. Okay? Let's -- I have no doubt you sincerely believe what you are saying. I have no doubt

to -- and these -- again, these were filed -- I would have to check the dates. They may have been filed and ruled on after the 2002 -- March of 2002. I could verify that, but essentially what occurs is there is a number of tax court cases involving the defendant one way or the other. The defendant loses those. The Court says various things like they are sham trusts, that -- just like Mr. Chisum argued that trusts are a matter of state and the federal courts don't have jurisdiction, that sort of thing, they say that's wrong. They say income needs to be taxed to the person who owns it. One tax court judge said, "I.R.S., I can't tell you what to do, but Mr. Chisum should be criminally investigated. You might consider doing that." This all takes place during the time period of our charged indictment. Now, those judges that made that ruling, those four, the defendant sues them in district court in the District of Columbia. Again, we are going to put this evidence on in a very, very short, very brief fashion, but the relevance of this is, again, we have to show the defendant violates a known legal duty. We are going to put forth evidence that the tax court is telling him what his legal duties are.

statute ?

THE COURT: What is his filing -- what do his retaliatory lawsuits have to do with his willfulness in violating the law?

under Cheek his good faith belief, what he believed. He can even explain why he believed what he believed.

THE COURT: But if you put on evidence that he has filed these lawsuits claiming that all of the government people are in a conspiracy against him, he is going to get up and explain that.

MR. GALLANT: He could do that even if we didn't put that on. He can always, under Cheek, argue my good faith belief is whatever and explain the basis for that. What he can't do under Willie and Cheek... he just can't say -- and it is a fine line, Your Honor, and it's a difficult line, but he can't say this is the law. I'm telling you the I.R.S. and the government and Congress is wrong. He can't say that, but he can say during this period of time I thought they were wrong and I thought they were wrong because of all of these reasons.

THE COURT: Okay.

MR. GALLANT: We have to show, Your Honor, a very high burden in tax cases. We have to show a violation of a known legal duty. I would submit there are few kinds of evidence that comes in court in the real world that is more powerful than this, that the tax court is telling him what the law is and not only does he ignore it, he sues the judges in saying you are all out to get me.

N-P

Mr. Chadsey, I anticipate, will say if he knew about these tax court rulings, he would have had a very different view about the nature of the trust. Again, it goes to the defendant's direct intent in misrepresenting the actual state of affairs to Mr. Chadsey.

THE COURT: Yeah, okay.

THE DEFENDANT: In the detention hearing in Arizona, the C.I.D. agent began by testifying that I was -- that they believed I was anti-government. Mr. Gallant has just given a great and wonderful speech where he thinks that I'm declaring that I am anti-government, when the exact opposite is true. I'm very pro-government. I simply want a government that I can know and define by the law, that the government follows the same kind of laws that it asks the people to follow. In the case -- in going down the list, and I'll get them out of order probably, but the subsequent acts up to 2002, and you can go all of the way up to 2005. In 1998, Attorney Richard Repauzo (sic), with the district counsel's office in Phoenix, Arizona, told two of my friends that their whole purpose was to put me out of business. Now, this is based on a foundation and the foundation in this case all happens in 1996 and 1997. In 1996, I don't have a bad opinion of the Internal Revenue Service; New Gingrich, the chairman -- the Speaker of the House of Representatives said it

was one of the world's --

THE COURT: Let's leave politcis out. Let's just stick with the law. Okay?

THE DEFENDANT: Okay. But the -- okay. In 1996, the part of the law that Congress passed, the Taxpayer Bill of Rights, number 2 -- that among other things said was that there were abuses that were on-going and that the people had a right to redress and enabled the people to sue agents for up to a million dollars. In 1989, after the Senate hearings in 1997, the House and the Senate passed the Restructuring Reform Act of 1998, saying that the whole culture of the Internal Revenue was acting outside the law and put forth this great massive law to correct it, including enabling the people to directly complain administratively to have agents terminated from their employment for misconduct. The General Accounting Office and their audits are also a part of the law.

In 1996, published in 1997, the General Accounting Office said the Internal Revenue Service was a culture that so messed up it couldn't be fixed. I want to fix it.

THE COURT: Well, okay.

THE DEFENDANT: I'm not trying to rebel against a known duty. I'm trying to fix the law so that the government acts according to it.

THE COURT: But you need to defend yourself of

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JIMMY C. CHISUM, Defendant.	)	CASE NO. CR-05-43-WH NOVEMBER 28, 2005

TRANSCRIPT OF TRIAL PROCEEDINGS

VOLUME I of III

HAD ON THE
28TH, 29TH AND 30TH DAYS OF NOVEMBER, 2005

BEFORE THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE

(AND A JURY)

MUSKOGEE, OKLAHOMA

APPEARANCES

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PROCEEDINGS

NOVEMBER 28, 2005

8:45 a.m.

(Call to Order of the Court)

THE COURT: We're on the record in CR-05-43, United States of America versus Jimmy C. Chisum.

Mr. Gallant is present for the Government. Mr. Knorr is present as standby counsel. Mr. Chisum is present in the courtroom.

The first thing I want to take up are the most recent filings today.

Mr. Chisum, when did you file your motion with the Tenth Circuit for stay?

MR. CHISUM: Sir, it will arrive at the Court today. I filed it by Express Mail on Friday.

THE COURT: One would think if one was serious about a stay, one would have done that a little sooner. But that's just a -- that's --

MR. CHISUM: Well, there was a holiday.

THE COURT: Now, am I finished talking?

MR. CHISUM: I'm sorry, Judge.

THE COURT: But maybe there's good reason for not. If you want to address that, as well as your -- I don't know.

exonerated of the allegations in the Indictment, but it has nothing to do, one way or the other, with your religion.

MR. CHISUM: Well, not meaning to show disrespect to the Court, but I believe it has everything to do with my religion. And it has to do with my religion as it involves my whole life. And one of the issues in my religion is that I am vehemently opposed to abortion. And because a portion of the income tax can be used in supporting or paying for abortion, I believe it would be a violation of Fourteenth Amendment even, or excuse me, Thirteenth Amendment even of involuntary servitude if there was a mandatory taxing system that forced me to contribute that money.

THE COURT: Okay. You're wrong.

What else?

MR. CHISUM: Well, I'm glad that His Honor has his mine made up. We just as well go on.

THE COURT: Well, I mean I've got in my mind -- I've read your -- I've read what you've filed. I've done some research myself over the weekend. And I feel pretty comfortable that this case doesn't involve religion. And so just -- you be ready. If you try to inject that into it, you be ready for me shutting you down pretty quick. I'll try to do it as respectfully as I can in front of the jury. But if you persist in doing that, you will forfeit your right to represent yourself.

18-4

MR. CHISUM: How am I allowed then any reasonable defense in willfulness, because the willfulness is an important

part of this case. And the willfulness goes directly to my religion and my beliefs and my exercise of those beliefs.

THE COURT: You've chosen to represent yourself, sir. I'm not permitted or want -- do I want to advise you on the law in that respect. That is for you to define of your own free will through your own research. But let me tell you. You're not there, okay?

Regarding your challenge jurisdiction, I believe I have ruled on all these reasons for challenge previously. To the extent I have not, I think one, two and three I have ruled on previously. Those are all denied as frivolous.

Number 4, you bring up the Notice of Appeal. Your Notice of Appeal was not an appeal from a Final Order. Collateral Order Rule does not apply here, because none of the defenses raised are effectively reviewable on appeal from a final judgment.

I further certify that the motions appealed from, specifically the ones alleging lack of jurisdiction, are and were frivolous. It is well established that the United States District Courts have jurisdiction. In your case, it's alleging violations of the tax code, which is what this case is.

Okay. I've received your requested voir dire. I've not read yet your requested jury instructions, but I do have those before me.

Okay. Anything else before we bring in the jury from you, Mr. Chisum?

NOTICE (N) 88 243782

Non-taxpayer Citizens of	)	CASE NO.
the united States.	)	NOTICE OF REQUEST FOR A
Attorney General of the	)	CERTIFICATION OF CONSIDERATION
united States, Congress	)	AND
of the united States	)	NOTICE OF DETERMINATION FOR
vs	)	REDEMPTION OF PROPERTY. VIA
United States quasi-	)	TACIT PROCURATION.
officials Secretary of	)	
Treasury, Commissioner	)	
of the Internal Revenue	)	
District Council, et al	)	

HAIL and BEHOLD, JIMMY C CHISUM, serves upon you this NOTICE OF REQUEST FOR CERTIFICATION and NOTICE OF DETERMINATION FOR REDEMPTION OF PROPERTY, VIA TACIT PROCURATION, pursuant to Discovery Rights, the Federal Truth In Lending Act (FTILA), Public Law 94-550 requiring Answer be under Oath/Affirmation as Noticee Response will have no force/effect at Law unless signed under Penalty of Perjury, to be Admissible on Court Record, and under Public Law 97-280, 96 STAT. 1211, and Biblical exhortation to: "...agree with thine adversary quickly whiles thou are in the way with him" (Matt. 5:25); considering the manifold issues to be resolved, I hereby extend this opportunity for us to

agree (of disagree) in advance of formal litigation. 88 243782

Each statement or sub-statement stands on its own merits as a separate fact for agreement. Sub-numbers (a) to (f) are used only for convenience of continuity of thought and do not make one statement dependent upon the other. All statements must be addressed separately as independent facts pertaining to the general category of taxation.

Your Answer upon completion per Public Law 94-550, shall be delivered to 3310 W. Bell Rd #1008, Phoenix, Arizona within thirty (30) days, and no later than ___ day of _____ in the year of our Lord 1988.

Since the proclivity of an Adversary is to avoid answering (Prov. 29:19), the following issues are answered on your behalf to preclude any stalemate arising from your failure/refusal to respond timely, although you may wish to enter specific and detailed objections in event we are not of one accord as to any point concerning taxation, law, money of account, authority, responsibility, jurisdiction, constructive fraud, or failure of procedure now inquire: "You have the right to remain silent you have the right to not answer any questions, without benefit of counsel, any admissions and confessions you make can and may be used against you in court of law civil or criminal." "Do you admit the Fact...???"

SUBJECT

88 243762

1. A subject is an individual member of a nation subject to its laws used in contradistinction to Citizen which is applied to the same individual member when considering his Natural GOD-given unalienable (un a LEEN' able) Rights. TRUE

1a. A Citizen is identified in Article IV Sec. 2 of the Constitution for the united States of America and is more fully defined in the concurring opinions of Dred Scott vs. Sanford 19 How (60 US) 393 at 404 TRUE

2. The person defined in Section 7701 (a)(1) of the Internal Revenue Code is of an artificial, created character with conventional disability. TRUE

3. An individual as used in 7701(a)(1) of the Internal Revenue Code, if to be construed as a noun may be a natural person with a disability. TRUE

4. A Natural Person without a disability is not subject to the same body of jurisprudence/statues as one with disability as defined in Section 7701 (a)(1) of the Internal Revenue Code. TRUE

5. A Natural Person (Individual without a disability) is a Free Person and not subject to income tax. TRUE

6. Public policy cannot trespass into the private matters of a Free Natural Person. TRUE

7. A Free Person absent restrictions, waivers, or disabilities possesses Rights provided by the Creator: and enumerated in the Constitution and Common Law, but many more which are not mentioned are retained. TRUE

8. The exercise of a Natural GOD-given, unalienable (un a LEEN' able) Right cannot be converted into a disability making a Natural Free Person subject to income tax. TRUE

9. Natural GOD-given Rights cannot be bartered away, given away of taken away. TRUE

10. The right of Property is part of a Natural Free Persons GOD-given Liberty. TRUE

11. Taxpayer as defined in Section 1313(b) of the Interral Revenue Code is a person subject to a tax under the applicable revenue law. TRUE

12. Taxpayer is a person or individual with a disability which makes him subject to income tax. TRUE

13. A Private Natural Free Person absent disability is a non-taxpayer. 88TR043782

14. A non-taxpayer has unalienable (un a LEEN' able) property rights. TRUE

15. A non-taxpayer is not required to file any form, statement, or list by the Internal Revenue Code. TRUE

16. A Private Natural Free Person is not subject to the jurisdiction or any rule by income tax code or regulation. TRUE

17. A non-taxpayer is not subject to the jurisdiction or rule by income tax code or regulation. TRUE

18. A non-taxpayer's rights or remedies may not be annulled in due course of law. TRUE

18a. Congress has restricted the Internal Revenue Code so as to make if apply only to taxpayers. TRUE

18b. A taxpayers rights and privileges concerning taxation are codified in Internal Revenue Code. TRUE

19. An Employee is one who obtained his conventional disability through the Social Security Act of 1935. TRUE

20. The Internal Revenue Service form W-4 is used to constitute consent and submission to the conventional disability of being an employee subject. TRUE

21. The Internal Revenue Service form W-4 is the application to participate in the privilege of the Revenue taxable activity called employment. TRUE

22. Employment is a privilege establishing the conventional disability under the Social Security Act of 1935, which creates the artificial character of Employer/Employee relationship. TRUE

23. The revenue taxable activity called employment is the act of working for the government. TRUE

24. The Internal Revenue Service forms W-2 and 1099 are declarations of a revenue taxable activity or privilege by the employer in his artificial capacity. TRUE

25. The Internal Revenue Service forms W-2 and 1099 are the evidence of revenue taxable activity submitted by the employer and is used as the measure of that activity. TRUE

26. The Employer with his conventional disability of being subject to income tax is an instrumentality doing business for the government. TRUE

26a. An employer is a corporation formed by strangers in the land with the privilege of doing business for profit and gain under government license. TRUE

27. The income tax is the forced compliance tithe to the Secular humanist religion of Government. TRUE

28. All income tax is based on a conclusion that the proceeds from a revenue taxable activity are profit or gain. TRUE

29. Income tax is imposed on the privileged profit or gain from a revenue taxable activity. TRUE

30. The basis used in the privileged activity of employment is a zero basis in labor to the person with a conventional disability. TRUE

31. The privilege of citizenship of the United States emanating from the 14th article of amendment to the United States Constitution is the disability which makes employment a revenue taxable activity subject to taxation of the measured income (a privilege gain). TRUE

31a. The United States Constitution is that embodiment rising from the shadows of the 13th and subsequent amendments and separating citizenship to a diversity of classes and are non-constitutional amendments. TRUE

31b. The United States Constitution is in direct conflict with the Constitution for the united States of America which was ordained and established 9-17-1787, as ratified, 1789 and amended by the bill of Rights in 1791. TRUE

31c. Under color of the United States Constitution, amendments 13-26, the congress has expanded its powers beyond the scope, intent, and purposes stated in the Constitution for the united States of America. TRUE

31d. Congressional expansion of powers thru 13-26th articles is a non-constitutional abrogation of the authority of "We, the People." TRUE

AUTHORITY

32. A Person who voluntarily submits to the authority of the income tax and files an Internal Revenue Service form delcaring his income, admits to liability. TRUE

33. A Person who admits to being liable consents to being subject to the Internal Revenue Code and the tax on his measured income. TRUE

34. A Natural Free Person who has not filed any list, forms or statement is a non-taxpayer and is not required to file; and can not be otherwise made liable to the tax imposed by the Internal Revenue Code. TRUE

35. Not all individual human beings are required to file any list, forms or statements TRUE

36. No Natural Free person is required to file any list, forms or statements. TRUE

37. All tax on income imposed by the Internal Revenue Code is based on voluntary self assessment and compliance. TRUE

38. Revenue taxable events are voluntarily reported annually and depend upon voluntary self assessment and self compliance. TRUE

39. The circumstance of voluntary compliance in prior years has no bearing on current or future years. TRUE

40. Without volunteering self assessment, no compliance can be required. TRUE

41. Voluntary compliance is the act of completing the appropriate form(s) for the revenue taxable activity. TRUE

42. The Internal Revenue Service form W-4 is the document used to obtain consent conferring Power of Attorney to the Employer to act as a collecting and reporting agent. TRUE

43. The Internal Revenue Service forms 1099 and W-4 are the information returns used for determining a presumed tax liability on the measured income. TRUE

44. The authority of the Internal Revenue Service is based solely on the liability of the taxpayer. TRUE

45. The use of a Social Security number manifests itself as implied consent to the conventional disability which gives authority to the Internal Revenue Service to presume the revenue taxable activities have occurred. TRUE

46. Presumption of power of attorney exists whenever the Internal Revenue Code tax related forms have been signed. TRUE

47. Upon consent to the Social Security contract presumption of Power of Attorney gives the Internal Revenue Service authority over the individual person as a taxpayer. TRUE

48. Application into Social Security forms a wholly owned and operated government corporation. TRUE

49. Participation in corporate government activity is a conventional disability which manifests itself in citizens being classed as corporate members subject to income tax. TRUE

88 213782

49a. Internal Revenue Service participation in commercial activities is extra government activity. TRUE

49b. There is no governmental authority for participation in commerce. TRUE

49c. Congress and the United States Department of Treasury can not delegate authorities they do not themselves possess. TRUE

49d. Usurpation of non-existent authority by the Internal Revenue Service is participation in unlawful activities. TRUE

49e. Participation in unlawful activities by the Internal Revenue Service to the detriment of "We, the People" constitutes racketeering. TRUE

50. The authority vested in the Internal Revenue Service does not extend to Natural Free Persons without conclusive evidence of natural of conventional disability. TRUE

51. The authority derived from the Internal Revenue Code only concerns revenue taxable activities. TRUE

52. The privilege of employment as a revenue taxable activity where a social security number is involved manifests the presumption of authority by the Internal Revenue Service. TRUE

53. The Internal Revenue Service forms W-2 and 1099 are the information returns which document the conventional disability and allows the presumption of authority by Powers of Attorney granted on the Social Security, and the Internal Revenue Service W-4, Social and other quasi-contracts. TRUE

54. The absence of authority over Natural Free Persons in their pursuit of Natural GOD given unalienable (un a LEEN' able) Rights totally bars all activities of the Internal Revenue Service. TRUE

55. There is no presumed or granted authority for the Internal Revenue Service in matters involving Natural Free Persons without conclusive evidence of natural or conventional disabilities. TRUE

56. Exercising Natural GOD-given unalienable (un a LEEN' able) Rights without disability to Government granted privileges is not revenue taxable and totally bars any authority of the Internal Revenue Service. TRUE

57. In the absence of written proof of delegation, by the Secretary of Treasury of the United States, revenue officers have no authority to create and file a return of tax. TRUE

58. The commissioner of the Internal Revenue Service, district directors of service centers and local district directors are not delegates of the Secretary of the Treasury of the united States of America. TRUE

59. Revenue officers are not delegates of the Secretary of Treasury of the united States of America. TRUE

60. The Internal Revenue Service is not part of the government of the united States of America. TRUE

61. The Internal Revenue Service is not a legal or lawful corporate entity authorized to do business in any State of the united States of America. TRUE

62. The Internal Revenue Service agents and officers masquerade as agents and delegates of Department of Treasury of the united States of America. TRUE

63. Internal Revenue Service employees are not officers of government of the united States of America or the Department of Treasury of the united States of America. TRUE

64. Absence of legal structure as a government agency of the united States of America, totally bars all revenue authority from the Internal Revenue Service. TRUE

65. Only the Department of Treasury of the united States of America and the Congress of the united States of America have revenue taxing and collection authority. TRUE

65a. The Congress of the united States of America has no authority to create executive branch administrative agencies. TRUE

65b. All taxing power is vested in the Congress of the united States of America and can not be delegated or contracted away. TRUE

65c. Usurpation of the authority of the Congress of the united States of America to lay and collect taxes as delegated by "We, the People" is conclusive evidence of racketeering by the Internal Revenue Service. TRUE

66. The Department of Treasury of the united States of America as representatives of the government are responsible to protect and preserve the Natural GOD-given Rights of "We, the People." TRUE

67. There is no authority for the Internal Revenue Service to exceed the few limited enumerated powers authorized to the government of the united States of America by the "We, the People" of the united States of America. TRUE

67a. The powers authorized to the government of the united States of America are merely delegated powers of, "We, the People" of the united States of America. TRUE

68. The Internal Revenue Service is subject to regulation under the Fair Debt Collection Procedures Act as added by PL 9509 Sept 20, 1977, 91 Stat. 874. TRUE

69. Without being subject there is no liability. TRUE

70. Resident aliens and the citizens of the United States are liable to the income taxes imposed by the Internal Revenue Code. TRUE

70a. A citizen is a person born or naturalized in the United States and subject to its jurisdiction. TRUE

71. Liability for the income tax imposed by the Internal Revenue Code depends for its existence on the enactment of a statute and not on a contract between the parties. TRUE

72. Liability for the income tax imposed by the Internal Revenue Code has not been imposed on the Citizen of the united States of America as identified in Article IV, Section 2 of the Constitution for the united States of America. TRUE

73. Filling out and signing the Internal Revenue Service forms creates a conventional disability establishing liability for the income tax imposed by the Internal Revenue Code by contractural agreement to become subject to the statute. TRUE

74. The Internal Revenue Service improperly uses the Internal Revenue Code Subtitle C assessments by converting them to the Internal Revenue Code Subtitle A tax assessments. TRUE

75. Non-taxpayers are not liable to the income tax imposed by the Internal Revenue Code. TRUE

76. Residents as defined in the code are citizens of the United States living in the District of Columbia or its possessions. TRUE

77. Brushaber vs. Union Pacific Railroad 240 US 1 has bearing only on resident aliens (14th amendment citizens of the United States). TRUE

77a. The Internal Revenue Service routinely attempts to claim the Brushaber case is applicable to both citizens of the United States and Citizens of the united States of America. TRUE

77b. Brushaber supra was prohibited from claiming a violation of the direct tax clauses Article I, Section 2, Clause 3; Article I, Section 9, Clause 4; of the Constitution for the united States of America and a violation of his rights due to his status as a resident alien (British subject). TRUE

78. Resident aliens and citizens of the United States limited to restricted privileges and immunities emanating out of the 13th and subsequent amendments. TRUE

79. The 16th amendment does not impose any liability on Citizens as identified in Article IV, Section 2 of the Constitution of the united States of America. TRUE

80. Citizens as identified in Article IV, Section 2 of the united States of America are liable for direct taxation on their income only as authorized in Article I, Section 2, Clause 3; and Article I, Section 9, Clause 4; of the Constitution for the united States of America. (Pollack vs. Farmers Loan and Trust)(158US601) TRUE

81. The income tax as imposed by the Internal Revenue Code is a stranger's tax applicable to the strangers in the land (resident aliens and citizens of the United States). (Matt 17:25-26) TRUE

81a. Resident aliens and citizens of the United States are the strangers in the land liable for taxation on income imposed by the Internal Revenue Code. TRUE

82. All artificial, created entities such as corporations and citizens of the United States are liable for income tax imposed by the Internal Revenue Code under the jurisprudence/statutes. TRUE

ASSESSMENTS

83. No assessment for the income tax imposed by the Internal Revenue Code can occur until a liability is established and Recorded. TRUE

84. No assessments for the income tax imposed by the Internal Revenue Code can be made without jurisdiction to assess. TRUE

85. No assessment for the income tax imposed by the Internal Revenue Code can be made without the conclusive evidence of a form, list, or statement TRUE

86. A substitute for return is not a return unless signed by the authorized, prepared or his delegate under the penalty of perjury. TRUE

87. A return prepared by the Secretary of the Treasury of the united States of America does not become a return without voluntary signing of the form by the taxpayer. TRUE

88. Non-taxpayer Citizens of the united States of America is immune from taxation on income imposed by the Internal Revenue Code. TRUE

88a. The non-taxpayer Citizens of the united States of America is immune from taxation on income imposed by the Internal Revenue Code. TRUE

89. Assessments for tax as imposed by the Internal Revenue Code can be made only against profits and gains from revenue taxable activities. TRUE

90. Absence of jurisdiction concerning the taxation of Citizen of the united States of America prohibits any assessment of tax as imposed by the Internal Revenue Code. TRUE

91. Lack of authority to assess a tax imposed by the Internal Revenue Code proves the absence of authority to claim a deficiency of tax imposed by the Internal Revenue Code. TRUE

92. The Non-taxpayer Citizen of the united States of America is outside the jurisdiction of the Internal Revenue Service and the income tax imposed by the Internal Revenue Code. TRUE

88 213762

ENFORCEMENT

93. The United States Tax Court jurisdiction applies to taxpayers only. TRUE

93a. Absent a Taxpayer contested issue the United States Tax Court is without jurisdiction and venue. TRUE

94. Non-taxpayer Citizens of the united States of America have no remedy in United States Tax Court TRUE

95. United States Tax Court and notices of Ddeficiency are tools used by the Internal Revenue Service to trick non-taxpayer Citizens of the united States of America into surrendering to the jurisdiction of the tax imposed by the Internal Revenue Code. TRUE

96. Tricks and artifices by the Internal Revenue Service, are evidences of FRAUD and constitutes racketeering. TRUE

97. Once jurisdiction has been challenged enforcement activities by the Internal Revenue Service must cease. TRUE

98. Distress, duress, distraint, fear, and intimidation are the five primary ways of defrauding the Non-taxpayer citizen of the united States of America of his jurisdictional bar. TRUE

99. All enforcement activities applied to the Non-taxpayer Citizen of the united States of America are unlawful. TRUE

100. The only jurisdiction under which the Internal Revenue Service can enforce provisions of the Internal Revenue Code is international contract law's alien admiralty jurisdiction. TRUE

101. International contract law has brought the foreign alien admiralty jurisdiction onto the land to be used by the Internal Revenue Service in its enforcement techniques. TRUE

102. The foreign alien admiralty jurisdiction was prohibited by the first Continental Congress from operating in the countries which poses a complete jurisdictional bar to its use. TRUE

103. Without a properly documented and signed international contract no foreign alien admiralty jurisdiction for the Internal Revenue Service enforcement exists. TRUE

104. An implied contract of international admiralty law once challenged is subject to full disclosure. TRUE

104a. Quasi-contracts of international admiralty law without proper disclosure and current ratification are without force and effect. TRUE

104b. Any expressed contract or quasi-contract of international admiralty law which opposes or impedes the unalienable (un a LEEN' able Natural GOD-given Rights of the Citizen of the united States of America is without force and effect due to its fraud. TRUE

104c. Any contract which is absent full disclosure is subject to recusal, revocation, recission, and loss of all obligations arising thereunder and a nullity of jurisdictional claims from its inception. TRUE

105. Enforcement of a code, regulation, or statute under foreign alien admiralty law without granted jurisdiction is misfeasance in office under color of law. TRUE

106. In order for a complaint or summons to issue for enforcement of Internal Revenue Laws, lawful jurisdiction must be established absolutely. TRUE

106a. Absent lawful jurisdiction any complaint is prohibited and without force and effect. TRUE

106b. Complaints for enforcement of Internal Revenue Laws can only issue against those subject to the jurisdiction of the United States. TRUE

106c. Internal Revenue Service complaints for the enforcement of Internal Revenue Laws can only issue against citizens of the United States for the purpose of taxation enforcement. TRUE

106d. Internal Revenue Service complaints must state the subject matter jurisdiction of the court and the venue to that statute alleged to have been violated. TRUE

106e. Internal Revenue Service complaints for enforcement of the Internal Revenue Laws must show the details of the revenue taxable activity alleged with the details which allege participation. TRUE

106f. United States Code Title 18 which provides jurisdiction of the United States Courts for criminal prosecution directly defines no tax related crimes for enforcement of income tax imposed by the Internal Revenue Code. TRUE

107. Indictment for enforcement of the Internal Revenue Laws can not issue without a properly sworn and itemized complaint supported by affidavit or verification. TRUE

107a. It is not sufficient to state mere conclusions of law in the indictment for the enforcement of the Internal Revenue Laws. TRUE

107b. The objective of the indictment is to furnish the accused with such a description of the charge against him as will enable him to make his defense. TRUE

107c. The indictment for the enforcement of the Internal Revenue Laws is to provide protection against further prosecution for the same cause. TRUE

107d. The indictment for the enforcement of the Internal Revenue Laws is to inform the court of the facts alleged so the court may decide whether they are sufficient in law to support a conviction. TRUE

107e. Crimes listed in Chapter 75 of the Internal Revenue Code are restricted to officers, employees, of a corporation and members and employees of a partnership as defined in Internal Revenue Code Section 7343. TRUE

108. Only persons liable to the tax imposed by the Internal Revenue Code who refuse or neglect to pay after a timely demand is made, can have a lien arise in favor the United States. TRUE

108a. Internal Revenue Code Section 6303 states the requirements for notice and demand by the Secretary. TRUE

108b. Proper notice and demand by the Secretary must be given as soon as practicable but no later than 60 days. TRUE

108c. Failure to properly notice within 60 days voids the assessment. TRUE

109. Without a valid assessment no lien for enforcement of the tax imposed by the Internal Revenue Code, can be issued. TRUE

109a. Any failure of the assessment breaches the lien for enforcement of tax imposed by the Internal Revenue Code. TRUE

109b. The date of the lien is the date of the assessment. TRUE

109c. The date the assessment is proven invalid is the date the lien is invalid. TRUE

110. Before any seizure or distraint for the enforcement of the tax imposed by the Internal Revenue Code can occur a liability must be established. TRUE

111. Before seizure and distraint for the enforcement the tax imposed by the Internal Revenue Code, notice and demand must be made. TRUE

112. Only property subject to forfeitures can be administratively seized. TRUE

112a. Property subject to forfeiture is limited to certain specific items listed by statute at Internal Revenue Code Section 7301-7304. TRUE

112b. Property subject to forfeiture is limited to articles such as those subject to a tax such as alcohol, tobacco, and firearms, the raw materials and the equipment used as specified in Internal Revenue Code Sections 7301-7304. TRUE

113. Only property subject to Subtitle E taxation can be seized by any revenue officer. TRUE

114. Any property other than that subject to Subtitle E taxation may only be seized by criminal investigators of the Intelligence Division and Internal Security Division of the Internal Revenue Service. TRUE

115. Property other than that subject to forfeiture as listed in Internal Revenue Code Sections 7301-7304, can be seized only through judicial order form a court of competent jurisdiction exercising Judicial Power as authorized in Article III of the constitution for the united States of America. TRUE

116. The Collectors (District Director) Warrant for Distraint for the enforcement of the tax imposed by the Internal Revenue Code allows a Deputy Collector now called a Revenue Officer to seize in the name of the Collector (District Director). TRUE

117. The Deputy Collector now called the Revenue Officer must have the collection Warrant of Distraint to seize in the Collectors name. TRUE

118. Seizure requires actual or constructive physical appropriation of the property to be levied against. TRUE

119. Only property subject to forfeiture can be taken administratively by actual or constructive physical appropriation. TRUE

120. Levy can only extend to the property appropriated when a current obligation exists. TRUE

121. The Notice of Seizure must be issued as soon as practicable after the seizure. TRUE

122. The Notice of Seizure without the evidence of the Collectors Warrant of Distraint must fail to seize any property subject to forfeiture. TRUE

123. The date which the Levy is deemed made is the date on which the Notice of Seizure is given. per Internal Revenue Code Section 6502(b). 125. With evidence of an invalid Lien the Levy process is void. TRUE

124 A Levy is not an independent act. TRUE

124a. A Levy procedure contains many steps. TRUE

124b. Failure to proceed correctly breaches and voids the Levy. TRUE

124c. An invalid assessment prohibits procedures for Levy. TRUE

125. With evidence of an invalid Lien the Levy process is void. TRUE

126. A Notice of Levy can only extend to wages and salaries of government employees and other property in possession of government agencies. TRUE

127. The Lien must be filed in the index system of the United States District Court. TRUE

127a. Notice of Lien can only originate after correctly indexed in the United States District Court. TRUE

127b. If the indexing is not properly filed with the United States District Court the Lien and Notice of Lien are without force and effect. TRUE

127c. The indexing of Liens must be a record with public access at the United States District Court. TRUE

128. The Internal Revenue Service functions as the collection agency for the Federal Reserve to retire currency from circulation and invoke/stimulate inflation. TRUE

129. Congress has allowed the Revenue officer great latitude in Internal Revenue Code Subtitle E taxes only. TRUE

129a. Congress has restricted the authority of Revenue Officers in Internal Revenue Code Subtitles A, B, C, D, and F, taxes to a narrow scope and then line with no enforcement authority. TRUE

130. A Revenue Officer can only function ministerially and whenever the officer exceeds that ministerial authority he loses his veil of immunity from suit. TRUE

131. The Internal Revenue Service uses the TACIT PROCURATION to fish for people who can be intimidated into giving up their Natural GOD-given unalienable (un a LEEN' able) Rights. TRUE

131a. Failure to respond to Internal Revenue Service fishing expeditions has no penalty or obligation in law. TRUE

131b. All TACIT letters by the Internal Revenue Service are to achieve admissions and confessions by fraudulent means and constitutes conclusive evidence of racketeering. TRUE

131c. The Internal Revenue Service can only request or subpoena records pertaining to informations on Internal Revenue Service lists, forms and schedules in their possession. TRUE

88 21378?

131d. Third party subpoenas as currently being used by the Internal Revenue Service are a fraudulent attempt to acquire admissions and confessions. TRUE

131e. The admissions and confessions obtained through the TACIT letters are of no force and effect due to the fraud and distraint. TRUE

132. Public books and records are only to be kept by taxpayers. TRUE

133. Summonses for books and records can only apply to taxpayers. TRUE

133a. Summonses can only be used to confirm information in the possession of the Internal Revenue Service. TRUE

133b. Summonses on third party recordkeepers are limited to licensed financial institutions. TRUE

134. Once notified the Internal Revenue Service has no authority or jurisdiction to correspond or communicate with the Non-taxpayer Citizen of the united States of America. TRUE

135. The Internal Revenue Service must always inform the Citizen of the united States of America of his Natural GOD-given unalienable (un a LEEN' able) Rights. TRUE

136. All communication with a Non-taxpayer Citizen of the united States of America exceeds the authority of the Internal Revenue Service, agent or officer. TRUE

137. "We ought to obey GOD not man". (Acts 5:29) TRUE

138. Issuance of a 2039 summons to a non taxpayer Citizen does not give any authority over that non-taxpayer. TRUE

139. Answering of 2039 summons by the non-taxpayer does not confer jurisdiction to the Internal Revenue Service. TRUE

140. Appearance before a board, commission, or agency does not surrender retained Natural GOD-given unalienable (un a LEEN' able) Rights or convey jurisdiction. TRUE

141. The Right to Contract at Law is not a State granted privilege to be violated by the Internal Revenue Service. TRUE

142. Contrary or inconsistent statutes can have no "legal" binding force without consent of all Parties to the Contract. TRUE

143. Income taxes as imposed by the Internal Revenue Code can only be measured in Lawful Money of Account Dollars. TRUE

144. Income taxes as imposed by the Internal Revenue Code can only be collected in Lawful Money of Account Dollars. TRUE

145. Since the payor did not compensate for services in Lawful Money of Account Dollars no tax can be measured or collected. TRUE

146. Lawful Money per 31 USC 371 or legal tender per 31 USC 392 does not include any of the following: Checks, credit cards, credit, letters of credit, checkbook money or demand deposits. TRUE

147. Court ruled in Bronson v. Rhodes, 74 U.S. 229,247,19 L.Ed. 141; "Lawful Money of the United States could only be gold or silver coin, or that which by law is made its equivalent, so as to be exchangeable therefore at par and on demand, and does not include a currency which, though nominally exchangeable for coin at its face value, is not redeemable on demand." TRUE

148. "Legal tender" is the same as "Lawful Money" TRUE

149. "Payment of debt" is no different than "tender for debt" or "tender in full payment" in Lawful Money of Account. TRUE

150. The "status" of an "Absolute Owner" differs from a conveyance of a "Qualified Owner." TRUE

151. Court furled in Gogarn v. Connors, 153 N.W. 1068, 188 Mich. 161, that a conveyance is said to be absolute, as distinguished from a mortgage or other conditional conveyance such as a seizure. TRUE

152. The Court ruled in Neff v. U.S., 465, 263, 377, 91 C.C.A. 241, that land is impervious to collateral attack by the City, County, State or Federal Governments. TRUE

153. The Court ruled in Barker v. Dayton, 28 Wis. 367; "In common and legal speech the word "Title" normally signifies (1) Ownership or when used with appropriate limiting words, a claim of ownership, or (2) the totality of the evidence, that is the operative facts which result in such ownership or which claim of ownership is based." TRUE

154. Congress reaffirmed Standard Unit of Value in Coinage Act of 1900 (3-14-1900, ch. 42, sec 1, 31 Stat. 45 TRUE

88 24378[illegible] 88 243782

155. Coinage Act of 1792 set the "Standard Unit of Value" at 31 USC 314 to be a Coin of Gold 24 8/10 grains pure 9/10 fine, and a Coin of Silver at 371.25 trains .999 fine silver--or 412-5 grains Standard Silver. TRUE

156. Federal Code at 31 USC 371/5101 did establish "...the dollar, cent and mill" as the "Money of Account" TRUE

157. Repudiation of Redemption of Silver certificates at 31 USC 5119(b)(1), effective 3-18-68, did not amend Article I; Section 10; Clause 1 of the Constitution for the united States of America. TRUE

158. Two (2) UNANIMOUS SUPREME COURT DECISIONS ruled: "Congress can not delegate Constitutional Powers to non-governmental entities"--as in Carter v. Carter Coal Co., 298 U.S. 238 (1936); and Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935); for both NRA and NIRA. TRUE

159. The Assistant General Counsel, R.L. Hunk, Department of Treasury, advised in letter of Feb. 18, 1977, "Federal Reserve Notes are not dollars." TRUE

160. That Court ruled in MacLeod v. Hoover, 105 So. 305, 159 La. 244 (1925); that "federal Reserve Notes...are recognized as good tender for money, UNLESS SPECIFICALLY OBJECTED TO." TRUE

161. Section 50, 51 and 52 of Am Jur 2d "Actions" on page 584--mandates: "No action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party." TRUE

162. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States, per Article IV Section 2 of the Constitution for the united States of America. TRUE

163. Pertinent State Statute reinforces 31 USC 371; Bronson v. Rhodes 74 U.S. 229, 247, 29 L. Ed; and others. TRUE

88 213782

Therefore by reason of the foregoing issues numbered 1 thru 163, the Secretary of the Treasury of the united States of America, and the Internal Revenue Service are without lawful basis to demand/accept "payments" from non-taxpayers nor to extract them by fraud from taxpayers whereby all are served with Constructive Notice by non-taxpayer Citizens of Documented "Constructive Fraud", wherein the Treasury, and the Internal Revenue Service's inability to refute/contest issues clearly constitutes legal basis for Summary Judgement of RETRAXIT, wherein Internal Revenue Service's "rights of action IS FOREVER GONE" (U.S. v. Parker, 7 S.CT. 454, 120 U.S. 89, 30 L.ED. 601 and Lewis v. Johnson Cal.app. 80P.2d90)

Also that as the preponderance of evidence clearly shows the diversity of Citizenship is clearly defined and documented showing that the non-taxpayer Citizen of the united States of America possessing all his Natural GOD-given unalienable (un a LEEN' able) Rights is in no way subject to the Internal Revenue Code imposed taxation on his income, gain, increase, wages, etc.

Further that the property including compensation for effort in exchange of property for money is not a revenue taxable activity subject to taxation on the income nor is that or any other property of the non-taxpayer subject to Lien, Levy, Seizure, Sale or any other impediment related to Income taxation imposed by the Internal Revenue Code.

88 21378?

Noticee response will have no force and effect at Law unless signed under Penalty of Perjury by Oath, or Affirmation to be admissible on court record pursuant to Public Law 94-550.

DETERMINATION/STIPULATION FINAL

This Determination becomes FINAL, unless specifically objected to in detail within thirty (30) days of receipt by Certified Mail No. _____, R.R.R.; or an extension of time granted...IF statutory authority is cited in initial 30-day period, by ___ day of _____, in the year of our LORD 1988.

Dated this ___ day of _____, in the year of our LORD, 1988.

Pursuant to Public Law 97-280, 96 Stat 1211, and Bible Doctrine of "...at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." (Deut. 19:15) "...that in the mouth of two or three witnesses every word may be established." (Matt. 18:16) "In the mouth of two or three witnesses shall every word be established." (2Cor 13:1), We put our hands to this Instrument/Constructive Notice.

witness

witness

witness

Non-taxpayer Citizen of the united States of America, servant of GOD, Public Minister of the Gospel of Jesus Christ, Son of GOD, Heir, Soldier.
Fourth Israel Christian

JC Chisum
3310 W Bell #1009
Phoenix Ariz
85023

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
95-0305907 05/30/95 03:41
MARLA 1 OF 1

Public Notice

DECLARATION OF ALLOD

The Earth is the LORD's and the Fullness thereof. The world and they that dwell therein. For He hath founded it upon the seas and established it upon the flood.

Whereas, ALMIGHTY GOD by the hand of JESUS Our LORD and KING created all things and is the ELOHIYM GOD of Creation, spoken of in the unanimous Declaration of the Thirteen united States.

Whereas, by Blood Covenant JESUS Our KING established an Everlasting Kingdom of Law in the Hearts of His Servants and Minds of His Obedient Children.

Whereas, America was explored, settled and organized as a government among men, for the Furtherance of the Kingdom Of GOD.

Whereas, GOD established His Kingdom relationship with the House of Israel and the House of Jacob forever.

Whereas GOD called Israel his First-born.

Where JESUS CHRIST declared and acknowledged all power in Heaven and Earth as the symbol of His coronation as KING.

Whereas, the regathering of Israel dispersed among the nations has occurred in this Continent for the Furtherance of the Kingdom Of GOD.

Whereas, the rightful ownership and possession of GOD's Land by His Chosen People has been declared as recorded in the records of Maricopa County on July 11, 1988 at Doc. Number 88 336526.

Whereas, GOD's precept principle, Common Law and KING's edict is the release of all debt in the seventh year.

Whereas, these here declared are descendants of His Tribes of Israel, regathered from among the heathen nations.

Whereas, these here signed have sought no benefit or privilege of Babylon and need not suffer her plagues and servitude of her sins.

Whereas, the traditions of men in Constitutions, Codes, Regulations, Policies and Statutes are blasphemous instruments to make the Laws of GOD of none effect.

Whereas, these hereto signed, have chosen to serve GOD rather than men.

Whereas, no man or government of men has a superior claim on the body, life, allegiance, or obedience of these men.

Whereas, man has glorified man rather than GOD.

Whereas, the governments have failed to promote and advocate the Kingdom Of GOD in this Land.

Therefore, we do declare this land to be of Separate and Superior standing as the bringing forth of the Kingdom Of GOD.

All Law herein shall be strictly judged by His double edged sword of Divine Law.

This land shall from this day forward be known by its Works, Fruits, and Faith for the Furtherance of the Kingdom Of GOD.

Whereas, the Mayflower Compact, Colonial Articles of Confederation, State Constitutions, Unanimous Declaration of the Thirteen united States, Articles of Confederation of the united States, declared advocated and promoted GOD's Kingdom and Law - So Be It.

Whereas, the only Law book needed in any court ever, was the Bible to show GOD's Law and Judgment - So Be It.

Whereas, this nation was brought forth in a day, blessed of ALMIGHTY GOD, Loyal to LORD JESUS CHRIST as KING - So Be It.

We therefore accept the commission of His Majesty, JESUS CHRIST of Nazareth as His Preachers, Teachers, Ambassadors, Servants, Soldiers, Judges and Governors.

Occupying His Land until His return.

Whereas, Patrick Henry declared the certainty of victory over the British "Because our Cause is Just," GOD fights for us -- So Be It.

We therefore call upon the Name of the LORD JESUS CHRIST Our KING as the I AM GOD and only Intercessor for His People.

By these writings, we do solemnly declare the Allodial True Ownership of JESUS CHRIST as KING, with Life Tenancy, vested in His Servant People who have chosen to be reigned over by JESUS CHRIST as KING.

This is an Irrevocable declaration and Pledge of Loyalty, Trust and Law.

Whereas, men may judge us by other than GOD's Law.

Therefore, by His Word and Promise, their tongue shall be condemned "And every...".

Whereas, our weapons are not carnal, but made mighty through KING JESUS CHRIST.

Therefore, we will to be at peace with all creation by GOD's Perfect Law of Liberty and as so are prohibited from bowing before man.

Whereas, the Claim and Notice have stood to the 7th year without challenge or debate.

Therefore, Allod by the Perfect Law of Liberty has been established. This is the Jubilee.

JESUS CHRIST is KING, in Our ZION for the Furtherance of His Kingdom.

The Eternal GOD, The HOLY ONE of Israel.

To this end we jointly pledge our lives, fortunes and our sacred Honor.

You see this is a religious Trust matter.

AMEN.

5/25/95 5-25-95

Kevin Burke 5-25-95 Mark Schroeder 5-25-95

John P Wilde 5-25-95 Roger Odle 5-25-95

Robert M Bird 5/25/95 John R. Nichaus 5-25-95

Richard Beck 5/25/95 Douglas Beedy 5-25-95

G.R. Huebner 5/25/95 Patrick Jarvis 5-25-95 AD

19950305907
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

The foregoing instrument is
a full, true and correct
copy of the original record
in this office.
Attest: 11/20/2003 11:15:28 AM

By _____ Recorder

NOTICE (N)

PUBLIC NOTICE OF CLAIM

"let us declare in Zion the work of the Lord our God."
(Jeremiah 51:10)

KNOW ALL MEN BY THESE PRESENTS: "Declare ye among the nations, and publish, and set up a standard: publish, and conceal not: say, Babylon is taken, Bel is confounded, Merodach is broken in pieces; her idols are confounded, her images are broken in pieces." (Jeremiah 50:2).

Arizona has been marked North, South, East and West, to stake the claim of reconciliation and acceptance of the Trust of God with his dominion in his Kingdom on Earth.

To the best of our Knowledge Arizona (the only state containing the letters Zion), was the first marked according to GOD's plan for the encampment of Israel and the design of the Cherubims on the Ark of the Covenant.

As his convenant people, Israel, we've called forth his saving grace to remit the sins of this land for its restoration and healing. By our Faith in our ever Faithful Father we have declared our recognition of his sole separate total Sovereignty. That any Sovereignty comes from and belongs to him with all power in heaven and earth by his word. (Matt 28:18; 1Cor 15:27; Rom. 13:1).

Our Father and GOD has always been the true possessor and

Recorded in official records of Maricopa County, Arizona
DATE JUL 11 '88 -2 00 FEE 9.00 PGS 4
KEITH POLETIS, COUNTY RECORDER DC

owner of the Earth and the fullness thereof. (Ps. 24:1)

In giving forth this notice to man we openly declare ourselves to be subject to the one and only true sovereign, our King Jesus, the one and only resurrected Son of GOD and Our Holy One of Israel, the Great I AM, Our one and only Eternal Living GOD.

The markers have been set, the altar has been erected, GOD's healing love has been called forth throught the laying on of hands. (Mk. 16:18; Eph 3:19). The freedom of Christ Jesus has been called forth in our Faith filled prayers for his knowledge and wisdom. Jesus himself said "...the truth shall make you free." (John 8:32). His knowledge will heal the people and the land. "My people are destroyed for lack of knowledge: because thou hast rejected knowledge, I will also reject thee, that thou shalt be no priest to me: seeing thou hast forgotten the Law of thy GOD, I will also forget the children." (Hosea 4:6). Don't be counted among the destroyed, your faith will set you free, heal you, restore you unto him in his kingdom on Earth and united with him in his kingdom for all Eternity.

This land was to fulfill his promise and this people were to serve only him.

The anti-Christ beast has attempted to ge GOD's people to give away their rights as children and heirs and the rights to property by making this people bow before the anti-Christ idols

of contract, banking, government, cults and false religions.

By our reconciliation and acceptance we open GOD's way to salvation and remission for the people and the land

As GOD declared in his prophecy "Come out of her my children that you take not of her plaques." (Rev. 18:4).

Congress has given the guidance and assistance, through Public Law 97-280, 96STAT.1211, wherein "our nation needs to scudy and apply the teachings of the Holy Scriptures" are recognized. We must now recognize and resolve to reclaim the land which has been improperly taken away by the institutions of man. This claim supercedes all claims by the institutions created by man. The Holy Scriptures are the one and only Law, all other is false religious trappings of men. "Receive not of her plagues."

Our Father is an all loving, all giving, truly benevolent GOD; zealous in His Faith to His People and His Land.

"For the earth in the Lord's and the fulness therof." (1Cor 10:26). "All power is given unto me in Heaven and Earth." (Matt 28:18). GOD's Sovereignty has been forever; and will continue forever and His rightful ownership and claim have now been maked in Arizona to spread from here in blessings and love throughout His Earth.

88 336526

5.

Brought forth this 5th day April, 1988 in truth and love.

Victory in Jesus----AMEN !

J.C. Chisum
Public Minister-Ambassador-Son-Servant-Soldier
of the Kingdom of God.

participant

participant

participant

participant

participant

participant

participant

participant

"...at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." (Deut. 19:15). "...that in the mouth of two or three witnesses every word may be established." (Matt. 18:16). "In the mouth of two or three witnesses shall every word be established." (2Cor 13:1).

jcp2

5

88 336526

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Public Minister-Ambassador-Son-Servant-Soldier
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participant

participant

participant

participant

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participant

participant

participant

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jcp2

Exhibit C:

Exhibit C: Excerpts from Complainant's 2005 hearings in his federal tax case.

Exhibit: C

TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

No. [PLEASE SUPPLY FILE NUMBER]

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

Complainants,

vs.

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

DEFENDANTS.

COMPLAINT PURSUANT TO 18 U.S.C. § 4 Misprision of felony; Violations include 18 U.S.C. §§ 3, 4, 241, 242, 876(d), 880, 1341, 1343, 1623, 1951(a), 1962(c), 1962(d); 26 U.S.C. § 7214.

VERIFIED CRIMINAL COMPLAINT

David R. Myrland
6619 132nd Ave. NE #100
Kirkland, WA 98033

*Table of Contents at page 2.

Supplied to all members: House Judiciary Committee, Committee on Government Reform, and Joint Committee on Taxation.

- TABLE OF CONTENTS -

At TAB #:

1 - Cover letter (verified) from David R. Myrland, policy analyst and taxpayer advocate, eye witness to DOJ's description of its prosecution process. 16 pgs.

2 - Complaint pursuant to 18 U.S.C. § 4 Misprision of felony. 33 pages.

3 - Abstract of Primary claims. 12 pages.

4 - Table of Authorities relied upon. 8 pages.

5 - Memorandum in Support. 58 pages.

6 - Certificate of Service - 1) House Judiciary Committee, 2) Joint Committee on Taxation, and 3) Committee on Government Reform. Also - Hon. Ron Paul.

7 - Declaration of Truth, authenticity of exhibits by David R. Myrland. 1 page.

8 - **Exhibit 1**. Protective Order issued by U.S. Dist. Court (Austin, TX) against discussion of the law.

9 - **Exhibit 2**. 26 CFR 1.83-6 amendment described. 8 pages.

10 - **Exhibit 3**. Affidavit of Tim Garrison, accountant of thirty years. 7 pages.

11 - **Exhibit 4**. IRS Publication 17 "Tax Guide for Individuals" excerpts. - 8 pages.

12 - **Exhibit 5**. Three annually consecutive copies of 26 CFR 602.101. 13 pages.

13 - CD-ROM containing - Tutorial to aid in researching and understanding these briefed issues. NOT MAC compatible.

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Tab #1

From the desk of:
DAVID R. MYRLAND
6619 132ND AVE. NE #100
KIRKLAND, WASHINGTON 98033

December 15, 2005

Honorable Senator/Representative,
Joint Committee on Taxation, Committee on
Gov't Reform, House Judiciary Committee,

Subject meeting: September 21, 2005, at 700 Stewart Street, Seattle, WA, U.S. Dist. Courthouse, **U.S. Attorney's Office, a meeting occurred** with a taxpayer and his attorney, U.S. Attorney Bob Westinghouse and IRS investigator (female), and I, David R. Myrland, policy analyst, in attendance, approx. 1:30 pm until 4:20 pm. The term "subject notice" refers to the Notice attached to a civil complaint in U.S. Dist. Court, Seattle, WA #C05-1513-MAT, *Ray Gebauer v. U.S., et al.*, (**fn.**[1]), which contained the same briefed issues in the attached Memo at **Tab #5**. From the stand point of claims made and briefed the subject notice and the Memo at **Tab #5** are identical.

What I witnessed at the subject meeting has convinced me to abandon my faith in the law and to get back into the system just to avoid *tax protester* prison. It's not because the system would protect me, but rather because being *in the system* protects me from higher crimes I otherwise would suffer if I object to the lower crimes (extortion) committed *in the system* by not paying, because of the fact that I'd be letting a lawless system feed off of me a little bit so I can avoid being imprisoned because I believed in the law.

I don't seek to prejudice this taxpayer by focusing directly on his situation, perhaps thereby diminishing *good faith* the prosecution may dispense. I also understand that Congress is reluctant to impede another branch in an ongoing process. However, everything discussed herein shows how DOJ policy is not just the threat to my future I've described, but is at present operating with the full knowledge of the prosecution (Westinghouse) to falsely imprison an innocent American; Mr. Gebauer is not a criminal, he is a victim.

My personal interests in this taxpayer's case arise from my having recently been harassed by the IRS in a very peculiar way I had never before seen. Because the law doesn't matter in America I promote H&R Block to everyone who wants to know what I have to teach. Despite this well known fact, the IRS penalized me twice for promoting abusive tax shelters after 10/21/04. Each time I was penalized one penny. THEN, the IRS credited back to my account that one penny so I owed ZERO and was told to not send payment, and that I could appeal these penalties to U.S. District Court. This is so Mr. Gonzales can go to a

[1] A civil action to perpetuate testimony under FRCvP 27 to review basis for DOJ investigation, not served via summons and complaint, not prosecuted.

Grand Jury and say, "You know, Mr. Myrland was penalized twice for promoting abusive tax shelters and he didn't even complain." (**See attached** copies of these penalty notices from the IRS).

My lengthy message to Treasury Secretary (Mr. Snow) at 202-622-6516 ("Jenny's hotline" according to the very nice main receptionist at Treas. Dept.) received no response and stirred no concern. (Summer, 2005). What is a monetary penalty with no money sanction attached to it? It's slander, it's libel and a campaign to build a false administrative record for future use of some sort. Am I now supposed to pay a $250 filing fee in U.S. District Court to complain about a ZERO penalty to prevent the DOJ from using it to get an indictment?

As a witness at the subject meeting, of specific interest to me was how this taxpayer's constructive notice and the issues briefed therein had been received by Westinghouse, and what his opinion was of not only the conclusions articulated therein but also of the gravity statutory provisions actually have in a criminal tax investigation and in the DOJ's process of obtaining a Grand Jury indictment under 26 USC. My IRS Centralized Authorization File number is #8005-84830R. My overall conclusions and assessment of DOJ policy governing tax prosecutions of Congressional members and their families (and We the People) are these:

> [As it pertains to whether or not any American will face prosecution for tax offenses, my years of research into tax statutes and regulations were wasted. Just <u>being</u> in America imposes income taxes without reference to law, one's beliefs determine legal duties without reference to law, and juries determine what one believes after the DOJ's best pitch; Congress (the Tax Code) has nothing to do with this process prior to alleging a violation of 26 USC §§ 7201 to 7206. Without reference to the statutory imposition of income taxes the DOJ formulates the scheme necessary to get a jury to say "guilty" and this alone guides its prosecution of individuals under 26 USC.
>
> This taxpayer (Ray Gebauer) is being falsely prosecuted in that the DOJ has no evidence whatsoever that the briefed interpretation of law is mistaken but will proceed to prosecute without such probable cause that 26 USC imposes the tax liability allegedly evaded, while the DOJ now has abundant evidence, <u>in the law</u>, that he has no liability to evade. -
>
> Silence about **<u>this</u>** will rule the DOJ's prosecution of this taxpayer. Because the law plays no role in a prosecution for tax crimes, whether or not an American goes to prison depends solely upon <u>guessing correctly</u> to this query, "I wonder if Mr. Gonzales (DOJ) can convince a jury that I believe what I don't believe to get a conviction, thus destroying my life."]

Consider the attached memorandum (**Tab #5**) to be <u>my statement of legal claims</u>, incorporated by this reference as if fully restated herein. The contents of this correspondence proves that open expressions of an affirmative belief in the law are a threat to <u>my</u> freedom.

This is my request, as someone similarly situated, (**fn.**[2]) for aid in avoiding imprisonment due to my having relied upon statutory provisions instead of the IRS, in ways that although perfectly legal and wholly without contradiction, they are so objectionable to the DOJ that I'll be indicted for uttering my belief that the law protects Americans as briefed by me. (See pgs.18 - 52).

I can't rightfully apologize for what you may view as complexities in my message, such is simply the nature of all communication when dealing in the Tax Code with which I'm forced to live. You need to talk to a real expert about the content of the Tax Code instead of the anti-tax movement crowd. They are well intentioned for the most part, but their insight is highly impaired for their lack of substantial research and fundamental knowledge of American jurisprudence. I've read thousands of cases and I write law as a hobby. My specialty is the content and operation of the chapters that impose taxes on individual incomes (compensation for services, capital gains). After the subject meeting I would now describe Mr. Gonzales' approach to tax prosecution as one which says, "Whether or not the law imposes a liability is irrelevant because I can convince a jury that money was received; that's good enough!"

It's not my fault that the courts say 26 USC § 83 applies to all compensation, but my five trips to the Supreme Court on the issue evoked only penalties for frivolity under decisions which clearly contradict four cases where the DOJ argued and the Supreme Court agreed on how to interpret "any property." My clients were penalized thousands of dollars for properly applying the language of the law to their compensation and asking for indulgence. (Tax Court #339-95 final order 3/21/96, *Talmage*, father of four penalized $6500.^{00}$ for, "I'll concede all facts of the case today if they'd just tell me how to comply with § 83."). Tax Court is the court that isn't certain whether it sits to hear issues at law or sits to penalize taxpayers who bring issues at law, like so, only one year apart:

> "...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 773).

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**).

---

[2] Self employed, compensation for services, American born or naturalized in the fifty states, Citizen of the United States.

At the subject meeting, Mr. Westinghouse stated that he's convinced that all issues in the subject notice are wrong, all legal conclusions are mistaken, and likened statutory claims argued therein to the strained and tortured *voluntary income tax* argument, an analogy which is utterly moronic. All of those legal conclusions are based on statute, and not on extrinsic statements of past IRS Commissioners and archaic Supreme Court cases (*Flora*, etc.). Mr. Westinghouse offered no commentary whatsoever as to *how* the conclusions were mistaken. Mr. Westinghouse theorizes that "*the tax is voluntary*" argument is the same as saying "if you'd tell me how I'm wrong about the law none of this would have happened in the first place."

Westinghouse said the brief was wrong, but to say that he has to have made legal conclusions about the authorities relied upon, naturally; ASK HIM what his conclusions about the notice's claims were and about how those claims about the law are misguided. The conclusions have to be wrong for the DOJ to be within its official right when bringing charges. Ask Westinghouse and Mr. Gonzales how the brief "is wrong"; it's just the law. **Core**; where is probable cause? What exactly is it when a liability is presumed without relation to law?

> 26 CFR 601.106(f)(1) "Rule 1. ***An exaction*** by the U.S. Government, which is not based upon law, statutory or otherwise, ***is a taking of property without due process of law***, in violation of the [5th Amendment]. . . ."

I know that the allegation of a tax liability (which was allegedly evaded) at the foundation of the DOJ's case against this taxpayer is a violation of due process, as are all tax prosecutions of individuals. Does Congress really intend this for the average American, for every American? This policy of the DOJ's flies in the face of everything I hear coming from the House and Senate floors when rights and due process are discussed, when separation of powers is discussed, when Congress puts it foot down on an agency; the IRS and DOJ are exempt when dealing [in] tax law. Ask him! What is Mr. Gonzales' lawful foundation for alleging evasion of a liability "imposed by this title"? Congress has nothing to do with the basis for this prosecution.

At the meeting Mr. Westinghouse stated quite clearly that merely residing in America imposed a tax liability on me, and that a belief in having to file a tax return imposed the duty to do so, while the subject notice cites Supreme Court decisions saying that taxes must be imposed by clear and unequivocal language, in statute, and while the Constitution says that Congress imposes income taxes and not some matter of residency or belief, *ala*, "You have that nice house, you drive a nice car, don't you think you have to pay your fair share? Part of living here is to pay taxes."

> 26 USC § 7201 Attempt to evade or defeat tax. - Any person who willfully attempts in any manner to evade or defeat ***any tax imposed by this title*** or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon

conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Imposed by this title, not by residency. Substitute "your presence" for "this title." The DOJ's evidence in this taxpayer's prosecution (each case) will remain utterly void of evidence (statute) that a liability exists upon which no taxes were duly paid.

> "There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have ***found the essential elements of the crime beyond a reasonable doubt***." *United States v. Nelson*, 137 F.3d 1094, 1103 (9th Cir. 1998) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Because Orduno-Aguilera properly preserved this issue by making a motion for an acquittal after the close of all evidence, this court's standard of review is the same as that of the district court's denial of that motion. *United States v. Bahena-Cardenas*, 70 F.3d 1071, 1072-73 (9th Cir. 1995)."

> "[4] . . . Because this fact is ***a necessary element of the statutory definition*** of anabolic steroids, which is ***in turn a necessary element of the offense***, failure to offer this evidence resulted in insufficient evidence to sustain the jury's verdict."

See *U.S. v. Orduno Aguilera*, No.98-50346 (CA9 filed 7/19/99). **Further** -

> "No rational trier of fact (a judge) could have found that this standard was met for Estrada. ***The record was barren of evidence that he participated in the conspiracy***."

> "[2] Even though Estrada initially denied living in the trailer, his denial was as consistent with non-participating knowledge of the crime as it was with complicity in the crime. ***When there is an innocent explanation for a defendant's conduct as well as one that suggests that the defendant was engaged in wrongdoing, the government must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that the latter explanation is the correct one. In Estrada's case, the government produced no such evidence***."

See *U.S. v. Estrada-Macias*, No.97-10115 (CA9 filed 7/12/2000).

The courts do not conduct tax prosecutions this way, they never have, choosing rather to hide in silence in one section (§ 7201 tax evasion or other statute) of a stack of rice paper sixteen inches thick, seven million words.

I believe precisely as is briefed in the memorandum. It's a portion of my final thesis on your Tax Code's scope and intent, derived via statutory interpretation under restrictions of well established maxims of law which are also briefed. It's only your law, not rocket science, monumental protections are in 26 USC and elsewhere. By bringing charges

Westinghouse and Mr. Gonzales are alleging non-payment of a § 1 liability (See Issues **A through D**, pg.18 - 35 of Memorandum), but it was not until Westinghouse spoke of prosecution that he mentioned "going by the law" to get a finding of guilt, that he intends to treat defendants "fairly." *We will treat you fairly when we falsely prosecute and imprison you based on an exaction; you're just an American.*

> How did 26 USC § 83(a) operate in his conclusions that I have a liability on his compensation for services?
>
> 26 CFR 602.101, same question? Can I just ignore this regulation? If this one regulation can be ignored, why not all?
>
> Westinghouse knows that without regulation 26 CFR 1.1-1, Citizens of the United States are not implicated as subject to any 26 USC tax, making it not imposed by Congress, but he prosecutes people for not paying it; can Americans be taxed by the executive branch's regulation, really? (See 26 USC 7801, 7805 [3]). Statute section 1 makes no mention of a political subject of the tax imposed thereby as do §§ 1402(b) and 3121(e), so regulation 1.1-1 is derogatory of statute and is void in its assertion that I (U.S. Citizen, born or naturalized in the United States) am implicated by the statute sought to be implemented thereby, 26 USC § 1.
>
> How can Westinghouse allege a liability when he hasn't allowed applicable provisions to operate in his 'determinations'?
>
> How can I stay out of jail when the law has no bearing on my being? How do I know what Mr. Gonzales can convince a jury of against me, so that I might choose a course to stay out of the DOJ's way?
>
> Does residency or does Congress impose taxes? Can a legal duty be imposed by one's beliefs? What if one believes that killing is proper, wouldn't murder then have become a legal duty? Can that person then be imprisoned for having fulfilled a legal duty? If beliefs impose legal duties, why prosecute those acting out against certain types of doctors? Can anyone say "invitation to anarchy"? We are inside Mr. Gonzales' Department of Justice at this exact moment as you read this; I witnessed it.

I'm named in 26 CFR 1.1-1 but not in statute, to tax compensation you start in § 83, the Secretary has to have permission to operate outside of D.C. (4 USC 72), 26 CFR 602.101 must be complied with. (See Issues A, B, C, pgs. 18 - 25 of the Memo). This is law, not some convoluted and nebulous claim that compliance is "voluntary." The duped Grand Juries, the judiciary, and his duped trial court jury member victims serving as merely his

[3] Secretary of the Treasury promulgates tax regulations and enforces the Tax Code (26 USC 7801, 7805).

tool of willful dereliction, these alone control taxation and enforcement; the provisions imposing income taxes must remain strictly OFF LIMITS!

Westinghouse gave a warm rendition of a speech about how he and others are not sinister, they do not conspire, they don't commit perjury and other acts against taxpayers, then promised to use a jury to tell a defendant that he believed he had liabilities; he can't do that:

> "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)" [4]
>
> "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.)

[4] See *Smith v. Gougen*, 415 U.S. 566, 572 (1974).

"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)." [5]

"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."

"***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." [6]

Mr. Gonzales is clearly engaged in a pattern of defiance of this principle, a fundamental tenet of due process. This is such a profoundly reckless display of power and such a negligent approach to everyone's lives and livelihood that it literally shocks the conscience. Since the DOJ has chosen this as its staple I have to get back into the system to remain safe and free, I can't rely on the law.

At the meeting this taxpayer was told that if he'd be lying by admitting believing he had a duty, he could not plead guilty in an agreement, but that failure to plead guilty would cause his wife to be indicted along with him. Put another way it sounds like, "If you truly do not believe you have a duty, your wife pays too, if you lie about it to the court, she doesn't get indicted."

Near the end of the meeting this taxpayer asked Westinghouse if he hadn't heard, in all his experience, of persons making far more revenue and paying little or no taxes on it, to which Westinghouse reasoned, *ala*, "They hired the right experts, they made full disclosure to the IRS, and it was found that they could proceed as they did." This requirement of full disclosure to get permission clearly precludes one from arranging their own affairs according to law and imposes a waiver of all rights to privacy in personal affairs; staying out of prison requires waivers of rights, involvement of experts, and the IRS' seal of approval. Congress is out of this loop. Mr. Westinghouse's behavior at this meeting and obvious disdain for the law convinces me of three things:

---

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

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

1. Everything briefed in the subject notice is a true representation of how the law operates to impose no tax on me for several reasons, and of how it protects every American in at least several glaring ways when it is honored.

2. No matter how well the law's been written and no matter how many protections it contains, if the IRS wants your money it will get it, and if you inquire or refuse you'll be jailed for crimes nobody can detect or prove.

3. **These are falsehoods**:

(a) The presumption of correctness enjoyed by the IRS disappears upon introduction of evidence to the contrary, a "determination" must be the result of a consideration of all relevant facts and statutes.[7]

(b) "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." [8]

(c) "With the IRS' broad power must come a concomitant responsibility to exercise it within the confines of the law." [9]

(d) "More importantly, the statute does not require that the taxpayer put a legal classification on his protest. The Service, however, with its expertise, is obliged to know its own governing statutes and to apply them realistically." [10]

(e) "***The mission of the Service*** is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and ***to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public***, determining the extent of compliance and causes of non-compliance, ***and doing all things needful to a proper enforcement of the law***." *Federal Register*, Vol.39, #62, Fri.March 29, 1974, 1110 Organization and functions of the Internal Revenue Service, Sec.1111.1 Mission.

(f) "It has long been established that a taxpayer has the right to arrange his affairs so as to minimize the taxes he pays. See *Gregory v. Helvering*, 293 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935). The firm's arrangements were not illegal and so were not prohibited[.]" [11]

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[7] 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.

[8] See *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937).

[9] See *Bothke v. Fluor Engineers and Constructors, Inc.*, 713 F.2d 1405, 1413, at [11] (CA9 1983).

[10] *Id.*

[11] See *Boccardo v. C.I.R.*, 56 F.3d 1016, 1018, 1020 (CA9 1995).

(g) Congress imposes taxes, its advice in the Tax Code can be believed. The executive and judicial branches honor the legislative branch and its mandate.

Because of this I must now convey my vote of NO CONFIDENCE in the DOJ and the IRS. My belief in the law was my own big mistake and I accept responsibility. Now that Mr. Gonzales has straightened me out on who really controls me, I'm going to follow the IRS and ignore Congress; I am going to the IRS for all of my legal advice because Congress won't even defend itself, and it certainly won't defend me. My findings are seamless, I'm right. If you can show me that I'm wrong you can claim to be brighter than the DOJ and IRS attorneys who faced these issues (most of them) for years on end, five times to the Supreme Court, U.S. Dist. Court and Bankruptcy Court, Tax Court, 4th and 9th Circuits, and couldn't even speak of them in civil and criminal cases; the law does not exist, Congress does not exist, ask any federal judge or U.S. Attorney, ask Mr. Gonzales.

I've seen the law honored and violated, I've seen justice *occasionally* dispensed and usually denied, and now I've witnessed the inner workings of a process which leads to prison without reference to the law but rather considers only belief and physical residency, thusly washing away my many years of research and self study with the expression of a single sentiment, an education derived from thousands of federal decisions, years of analysis of the Tax Code and regs., point by point briefing against IRS and DOJ tax attorneys on every federal level where they can't talk about the law; a waste of time because the law has nothing to do with taxation and imprisonment in America. If this were not true, Mr. Gonzales could explain verbally and in writing how my statutory (that's law, in a nation of laws, supposedly) claims are "wrong." Any inquiry into this should begin with its focus right on this spot and demand working papers in tax criminal cases which show the application of the law to the individual convicted, laws like 4 USC 72, 26 USC §§ 83, 212, 1001, 1011, 1012, 1402(b), 3121(e), 6201(a), 7343, 26 CFR 602.101, because we know that surely those papers exist, in a nation of laws. (It's called prosecutorial due diligence and probable cause). Willful failure to so construct a prosecution constitutes nothing less than a conspiracy to deprive, in violation of 18 USC 241. Does Congress sit to tolerate this?

> "Past decisions of this Court demonstrate that ***the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial***, not the culpability of the prosecutor. In *Brady v. Maryland*, 373 U.S. 83 (1963), for example, the prosecutor failed to disclose an admission by a participant in the murder which corroborated the defendant's version of the crime. ***The Court held that a prosecutor's suppression of requested evidence violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution***. *Id.* at 87. Applying this standard, the Court found the undisclosed admission to be relevant to punishment, and thus ordered that the defendant be resentenced. Since the admission was not material to guilt, however, the Court concluded that the trial itself complied with the requirements of due process despite the prosecutor's wrongful suppression. ***The Court thus recognized that the***

aim of due process "is not punishment of society for the misdeeds of the prosecutor, but avoidance of an unfair trial to the accused." *Ibid.*

This principle was reaffirmed in *United States v. Agurs*, 427 U.S. 97 (1976). ***There we held that a prosecutor must disclose unrequested evidence which would create a reasonable doubt of guilt that did not otherwise exist***. Consistent with *Brady*, we focused not upon the prosecutor's failure to disclose, but upon the effect of nondisclosure on the trial:

> Nor do we believe the constitutional obligation [to disclose unrequested information] is measured by the moral culpability, or willfulness, of the prosecutor. ***If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it***. Conversely, if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. ***If the suppression of the evidence results in constitutional error***, it is because of the character of the evidence, not the character of the prosecutor." [12]

Ask for the working papers that have to exist as a matter of law. The DOJ has those issues briefed in the subject notice, so it has to have drawn conclusions at law which contradict the notice and therefore allow a prosecution to proceed. Ask Mr. Gonzales for these papers!

If Congress can't explain how I am "wrong" about YOUR statutes then I demand Congress' intervention. If the briefed issues cannot be disproved then the attached complaint under 18 USC § 4 provides ample basis for Congress to act to halt an unforgivable pattern of extortion and abuse spanning decades.

Until I have Congress' written assurance that I will not be charged or molested in relation to any tax statute having willfulness as one of its elements or under any statute requiring criminal intent (18 USC conspiracy to defraud U.S.), I have to believe that Congress is content with the DOJ and the IRS setting the law aside to collect revenue, seize property, and imprison innocent Americans.

I view the DOJ's use of the courts as an abhorrent abuse of power. I have to get back in the system to avoid Mr. Gonzales falsely imprisoning me; my rights under the law are void, my patriotism was proof of my ignorance. Does Congress stand for this? If Gebauer's matter results in criminal charges it will only underscore as truth my assessment of DOJ policy, and as a reality the threat I've described.

///

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///

[12] See *Smith v. Phillips*, 455 US 209, 219 (1982).

I, David R. Myrland, do hereby swear under penalties of perjury (28 USC 1746) that the forgoing statements are true and correct, and that they reflect my assessment of the policies of the DOJ as revealed at the subject meeting, as they relate to prosecution of alleged tax crimes. Executed this 19th day of December, 2005.

David R. Myrland, Affiant

The above affirmation was duly subscribed and sworn to before me, this 19th day of December, 2005, by David R. Myrland.

I, Alfredo T-Torio, am a Notary under license from the State of Washington whose Commission expires on June 15, 2008, and be it known by my Hand and my Seal as follows:

Notary signature

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Notary Public
State of Washington
ALFRED T. TORIO
My Appointment Expires Jun 15, 2008

Department of the Treasury
Internal Revenue Service
FRESNO, CA 93888-0010

Date of this notice: MAR. 21, 2005
Taxpayer Identifying Number: [redacted]
Form: CVL PEN Tax Period: DEC. 31, 2003

For assistance you may call us at:
1-800-829-0922

CALLER ID: 895479

DAVID R MYRLAND
6619 132ND AVE NE
KIRKLAND WA 98033-8627194

NOTICE OF PENALTY CHARGE 628

WE MADE A CHANGE TO YOUR ACCOUNT THAT RESULTED IN A VERY SMALL BALANCE DUE. WE WANT YOU TO KNOW ABOUT THE CHANGE, BUT NO PAYMENT IS DUE. OUR POLICY IS TO KEEP YOU INFORMED, BUT WE DON'T WANT TO BURDEN YOU BY ASKING YOU TO PAY THIS AMOUNT. AGAIN, PLEASE DON'T SEND A PAYMENT.

YOU HAVE BEEN CHARGED A PENALTY UNDER SECTION 6700 OF THE INTERNAL REVENUE CODE FOR PROMOTING AN ABUSIVE TAX SHELTER.

TAX STATEMENT

PRIOR BALANCE	$.00
PENALTY ASSESSMENT	.01
INTEREST CHARGED	.00
BAD CHECK PENALTY	.00
*UNDERPAYMENT CREDIT	$.01-
BALANCE DUE	NONE

*THE SMALL BALANCE THAT YOU OWED HAS BEEN CREDITED TO YOUR ACCOUNT. YOUR ACCOUNT BALANCE IS NOW ZERO.

WE CHARGED YOU A PENALTY FOR PROMOTING AN ABUSIVE TAX SHELTER. THE PENALTY IS $1,000 OR 20 PERCENT OF THE GROSS INCOME YOU DERIVED (OR MAY DERIVE) FROM THE ACTIVITY, WHICHEVER IS GREATER. FOR ACTIVITIES AFTER DECEMBER 31, 1989, THE PENALTY IS $1,000 OR 100 PERCENT OF THE GROSS INCOME DERIVED (OR TO BE DERIVED) FROM THE ACTIVITY, WHICHEVER IS LESS.

FOR ACTIVITIES AFTER OCTOBER 22, 2004, THE PENALTY FOR MAKING OR FURNISHING (OR CAUSING ANOTHER PERSON TO MAKE OR FURNISH) A STATEMENT DESCRIBED IN IRC SECTION 6700(A)(2)(A) IS 50 PERCENT OF THE GROSS INCOME DERIVED (OR TO BE DERIVED) FROM THE ACTIVITY.

IF YOU WANT US TO REMOVE OR REDUCE ANY OF THE PENALTIES WE CHARGED, YOU HAVE UNTIL APR. 20, 2005 TO PAY 15% ON THE PENALTY AND FILE A CLAIM FOR A REFUND ON A FORM 6118. FORMS 6118 ARE AVAILABLE AT MOST IRS OFFICES, OR YOU CAN ORDER ONE BY CALLING TOLL-FREE 1-800-829-3676.

IF WE DENY YOUR CLAIM, YOU MAY FILE A SUIT IN THE UNITED STATES DISTRICT COURT WITHIN 30 DAYS AFTER THE DATE WE DENIED YOUR CLAIM OR WITHIN SIX MONTHS AND 30 DAYS AFTER THE DATE YOU FILED YOUR CLAIM, WHICHEVER IS EARLIER. IF YOU DON'T FILE A CLAIM OR A SUIT WITHIN THE TIME LIMITS, YOU'LL HAVE TO PAY THE FULL AMOUNT SHOWN BELOW.

HELPFUL HINT: FOR FASTER SERVICE, TRY CALLING US ANY DAY EXCEPT MONDAY WHEN OUR CALL VOLUMES ARE HIGHEST.

RETURN THIS PART TO US WITH YOUR CHECK OR INQUIRY
YOUR TELEPHONE NUMBER BEST TIME TO CALL
( ) -

AMOUNT YOU OWE..... NONE

628

WI

200510 85254-456-52001-5

INTERNAL REVENUE SERVICE
FRESNO, CA 93888-0010

DAVID R MYRLAND
6619 132ND AVE NE
KIRKLAND WA 98033-8627194

5

539725110 KK MYRL 55 0 200312 670 00000000001

Department of the Treasury
Internal Revenue Service
FRESNO, CA 93888-0010

Date of this notice: MAY 2, 2005
Taxpayer Identifying Number: [redacted]
Form: CVL PEN Tax Period: DEC. 31, 2003

For assistance you may call us at:
1-800-829-0922

CALLER ID: 895479

010496.191325.0025.001 1 AT 0.292 750

DAVID R MYRLAND
6619 132ND AVE NE
KIRKLAND WA 98033-8627194

0496

NOTICE OF PENALTY CHARGE 628

WE MADE A CHANGE TO YOUR ACCOUNT THAT RESULTED IN A VERY SMALL BALANCE DUE. WE WANT YOU TO KNOW ABOUT THE CHANGE, BUT NO PAYMENT IS DUE. OUR POLICY IS TO KEEP YOU INFORMED, BUT WE DON'T WANT TO BURDEN YOU BY ASKING YOU TO PAY THIS AMOUNT. AGAIN, PLEASE DON'T SEND A PAYMENT.

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TAX STATEMENT

PRIOR BALANCE	$.00
PENALTY ASSESSMENT	.01
INTEREST CHARGED	.00
BAD CHECK PENALTY	.00
*UNDERPAYMENT CREDIT	$.01-
BALANCE DUE	NONE

*THE SMALL BALANCE THAT YOU OWED HAS BEEN CREDITED TO YOUR ACCOUNT. YOUR ACCOUNT BALANCE IS NOW ZERO.

WE CHARGED YOU A PENALTY FOR PROMOTING AN ABUSIVE TAX SHELTER. THE PENALTY IS $1,000 OR 20 PERCENT OF THE GROSS INCOME YOU DERIVED (OR MAY DERIVE) FROM THE ACTIVITY, WHICHEVER IS GREATER. FOR ACTIVITIES AFTER DECEMBER 31, 1989, THE PENALTY IS $1,000 OR 100 PERCENT OF THE GROSS INCOME DERIVED (OR TO BE DERIVED) FROM THE ACTIVITY, WHICHEVER IS LESS.

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IF WE DENY YOUR CLAIM, YOU MAY FILE A SUIT IN THE UNITED STATES DISTRICT COURT WITHIN 30 DAYS AFTER THE DATE WE DENIED YOUR CLAIM OR WITHIN SIX MONTHS AND 30 DAYS AFTER THE DATE YOU FILED YOUR CLAIM, WHICHEVER IS EARLIER. IF YOU DON'T FILE A CLAIM OR A SUIT WITHIN THE TIME LIMITS, YOU'LL HAVE TO PAY THE FULL AMOUNT SHOWN BELOW.

HELPFUL HINT: FOR FASTER SERVICE, TRY CALLING US ANY DAY EXCEPT MONDAY WHEN OUR CALL VOLUMES ARE HIGHEST.

0496

ETURN THIS PART TO US WITH YOUR CHECK OR INQUIRY
'OUR TELEPHONE NUMBER BEST TIME TO CALL
) -

AMOUNT YOU OWE..... NONE

628

II

200516 85254-456-52001-5

INTERNAL REVENUE SERVICE
FRESNO, CA 93888-0010

DAVID R MYRLAND
6619 132ND AVE NE
KIRKLAND WA 98033-8627194

539725110 KK MYRL 55 0 200312 670 00000000001

Tab #2

TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

David R. Myrland, Tim Garrison, Lee J. Herold, Paul Broward, Greg Weiss, Jim L. Walden, and We the People, Complainants, vs. UNITED STATES DEPARTMENT OF JUSTICE, ALBERT GONZALES, UNITED STATES TREASURY DEPARTMENT, JOHN W. SNOW, INTERNAL REVENUE SERVICE, MARK W. EVERSON, U.S. DISTRICT COURT, GARR M. KING, LEE YEAKEL, ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, TERRY L. MARTIN, U.S. TAX COURT, JOEL BERGER, NORTHWEST AIRLINES (a corporation), and all those similarly situated or so involved, marital communities spared, DEFENDANTS.	) No. _____)))) INFORMATION: 18 U.S.C. §§ 3, 4,) 241, 242, 876(d), 880, 1341, 1343,) 1623, 1951(a), 1962(c), 1962(d), 2235;) 26 U.S.C. § 7214.)) VERIFIED CRIMINAL COMPLAINT) of felonies, filed pursuant to 18 U.S.C.) § 4 Misprision of felony.))))))))

I. INTRODUCTION & PARTIES.

1.1 COMES NOW, Complainants above named, seeking herewith to comply with 18 U.S.C. § 4 by reporting felonious conduct and to cause the commencement of

proceedings to establish either the lawful basis for the conduct complained of or to establish that said conduct is prohibited by law, *a fortiori*, is felonious in its nature. Complainants respectfully request a hearing for the purposes of presenting and explaining the evidentiary basis for their claims of criminal misconduct on the part of the Defendants. Among the Complainants the facts alleged are first hand knowledge.

1.2 When Defendant UNITED STATES needs a protective order (**Tab #8**) against inquiries regarding three different laws (4 U.S.C. § 72; 26 CFR 1.1-1, and 602.101), and when Defendants LEE YEAKEL and U.S. DISTRICT COURT (Austin, TX) issue such protective orders to save said Defendant from Congress, Complainants presume and conclude that the conduct so protected constitutes the crimes alleged herein. Until the attached Memorandum of law is discredited with cogent opposition comprised of law, 18 U.S.C. § 4 requires Complainants to complain of felonies alleged herein.

1.3 Defendants have engaged in a course of conduct over the past several years (1954 Tax Code) which has caused and is causing, **1)** the imprisonment of innocent Americans, **2)** the undue loss of homes and other property, **3)** the undue loss of jobs, wages and salaries, and accounts receivables, **4)** the undue loss of whole businesses, **5)** the destruction of family relationships and associations, and **6)** loss of reputation.

1.4 By conducting false arrests and mock trials throughout America Defendants have conspired to extort monies from Americans in ways known by them to be unlawful. U.S. District Courts have and will issue protective orders against discussion of the law in civil proceedings instituted to discern the least proof of statutory authority of Defendant INTERNAL REVENUE SERVICE (hereinafter "IRS") to contact any American living in the fifty freely associated compact states.

1.5 Anyone receiving this Complaint shall consider it to be their constructive notice of the acts complained of herein. "Ignorance of the law is no excuse, in any country. If it were, the laws would lose their effect, because it can be always pretended. . . With us, there is no power which can suspend the law for a moment." (See *Thomas*

Jefferson to Andrew Limozin, 1787, ME 6:401). Only Congress shall command and forbid, in America. This Complaint challenges Congress to either give Americans access to the law by disproving the issues briefed, or halt clear usurpation of its taxing authority by the executive and judicial branches.

1.6 The conduct complained of includes but is not limited to, **1)** malicious prosecution and false imprisonment, **2)** extortion of property under color of official right in an ongoing racketeering enterprise, **3)** imposition of monetary penalties for anyone's reliance upon statute which clearly protects them, **4)** illegally obtaining articles in and of commerce in the interference therewith, **5)** intentionally mailing threatening communications to Americans who owe nothing, and **6)** misprision of felony and accessory after the fact.

1.7 The attached Memorandum and exhibits (1 through 6) are incorporated by this reference as if fully restated herein. The statutory authorities relied upon in the attached Memorandum show modes of enforcement freely visited upon U.S. Citizens by the Defendants to be borne of regulation and not of statute. As used herein the term "as briefed" or "Memo" refers to the attached Memorandum.

1.8 Complainant David R. Myrland conducted the statutory and regulatory analysis briefed in support hereof. With the exception of Issue A, the analysis and thesis was completed in 1995, and was litigated in federal courts and therefore disclosed beginning in 1994 (See Memo at ¶¶ 1.2 - 1.4, **Tab #5**).

1.9 Complainant Tim Garrison is an accountant in WA with over thirty years experience which includes dealing with individuals' IRS controversies and audits. In MARTIN's investigation of Mr. Myrland (spring/summer '05), he falsely stated that he possessed a flyer whereon Mr. Myrland was promoting a "corporation sole" (some type of trust?) which he of course had not promoted at all. After receiving Mr. Myrland's many assurances that he's been recommending ONLY H&R Block for nearly ten years (after seeing the courts' failures), and after receiving a copy of Mr. Myrland's curriculum in June or July '05(?), MARTIN did not rebut and caused the Fresno, CA

office of the IRS to penalize Mr. Myrland twice for promoting abusive tax shelters. (See **Tab #1**, Myrland's verified letter to Congress, penalty notices attached thereto).

1.10 Each of these penalties was in the amount of $.01 (**1 penny**), each were paid *for* Mr. Myrland by the IRS, each "notice of change" to his account saying that he owed "NONE" and requesting that he not send payment, while everybody else (anti-IRS movement, others) is being indicted. Mr. Myrland does not file or pay under 26 USC because he has no requirements as briefed, and he refuses to do so until his findings about statutes which do not so compel him are rebutted in a manner deserving of Congress, or until Congress proclaims by ignoring this complaint that it refuses to protect itself from the executive and judicial branches.

1.11 Complainants **Lee J. Herold**: Rendered coerced plea when U.S. Dist. Court refused to hear his motion to dismiss. **Jim L. Walden**: Victim of U.S. Dist. Court's (Austin, TX) protective order against his gaining access to the law, IRS seeking his records. **Greg Weiss**: IRS seeking his records, Oregon. **Paul Broward**: Employed by Defendant NORTHWEST AIRLINES with ongoing dispute over proper application of tax law to his compensation. Personal contact information supplied off record.

1.12 Defendant U.S. DEPARTMENT OF JUSTICE (hereinafter "DOJ") where Defendant ALBERT GONZALES is currently U.S. Attorney General, aided in the past or present by ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, and all U.S. Attorneys similarly situated, have the main address of U.S. Department of Justice 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

1.13 Defendant UNITED STATES TREASURY DEPARTMENT where Defendant JOHN W. SNOW is currently serving as U.S. Treasury Secretary has as its main address Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220.

1.14 Defendant INTERNAL REVENUE SERVICE where Defendant MARK W. EVERSON is currently serving as IRS Commissioner has as its main address 500 N. Capitol St., NW, Washington, DC 20221.

1.15 Defendant U.S. DISTRICT COURT (Portland, OR) where Defendant GARR M. KING presides or presided as U.S. District Court Judge has as its main address 740 Mark O. Hatfield, United States Courthouse, 1000 Southwest Third Avenue, Portland, OR 97204-2802. Defendant LEE YEAKEL likewise serves as U.S. District Judge in Austin, TX and has as [his] main address United States Courthouse, 200 West Eighth Street, Austin, TX 78701. Those similarly situated include those who serve or operate in kind, hereinafter "COURT."

1.16 Defendant U.S. TAX COURT where Defendant JOEL BERGER is a U.S. Tax Court Judge who tries cases against Americans without personam jurisdiction has as its main address U.S. Tax Court, 400 Second Street N.W., Washington, DC 20217. Those similarly situated include all who preside or have presided in U.S. Tax Court.

1.17 Defendant TERRY L. MARTIN is a low level IRS employee whose office is at 1201 Pacific Ave., Tacoma, WA 98402. Those similarly situated include those who investigate, determine, authorize, administer, or otherwise serve in kind.

1.18 Defendant NORTHWEST AIRLINES (hereinafter "NWA") is a corporation which has chosen to participate in the conduct complained of and is located at Northwest Airlines Corporation, 2700 Lone Oak Parkway, Eagan, Minnesota 55121.

PRIOR KNOWLEDGE:

1.19 With the exception of Defendant NWA, Defendants and each of them were made fully aware of all of this when Defendants U.S. Atty. Kevin V. Ryan and Jay R. Weill (Ass't. U.S. Atty., Chief Tax Division) received a "Constructive Notice" in kind (same issues) to the one(s) in support of this 18 U.S.C. § 4 Complaint, who then [crafted] an "Opposition to Complaint for the Perpetuation of Testimony" (filed 9/11/03) seeking to dismiss a purposely defective civil complaint in U.S. District Court, San Francisco, CA. The FRCvP 27 Complaint was filed only for the purposes of getting a docket number for the Constructive Notice and to ensure that any Grand Jury would be entitled to view it. **The Notice** (not the complaint or summons) **was served as such**

upon U.S. Atty. Thomas Moore on September 8, 2003. (See U.S. Dist. Court, San Francisco, CA, *Lewis v. United States, et al.*, #C-**03**-4101-JSW, filed 9/9/03). Although this stopped the prosecution of Roy Lewis and his father (state's evidence), apparently, the Defendants and each of them felt wholly unmoved by Congress and simply forged onward.

1.20 The United States (in *Jim L. Walden v. United States, et al.*, #A-**05**-CA-444-LY, U.S. Dist. Court, Austin, TX) has admitted tacitly that Title 26 USC's provisions do not provide for any contact between the Internal Revenue Service and Americans living within the fifty freely associated compact states. In *Walden* only Issues A, B, and C were briefed and filed in memorandum. (See same Issues in Memo at pg.18 - 25, **Tab #5**).

1.21 In *Walden, id.*, **the United States asked for a protective order** against having to answer the questions for review found under Issues A, B, and C briefed herein, **and that protective order was issued by Defendant judge LEE YEAKEL on 8/2/05**. (See **Ex.1**, **Tab #8**). Said protective Order was issued expressly and only to bar Mr. Walden's asking questions under Issues A, B, and C of the attached memorandum.

Begin quote of individual claim summaries and questions presented for review in *Walden* against which Defendant YEAKEL issued the protective Order:

> **"Claims under Issue (A) of Plaintiff's brief:**
> 3.10 Defendant has no statutory authority to tax the Plaintiff due to his Citizenship. The mention of Plaintiff's Citizenship in regulation is a grossly insufficient basis upon which to tax the Plaintiff. The Secretary of the Treasury has imposed a tax on the Plaintiff through 26 CFR 1.1-1(c), but has done so without authority to do so, the authority to lay income tax having been reserved to Congress and Congress alone, *a fortiori*, said regulation is null and void as a deviation or derogation of statutory authority, be it under 26 USC § 1 or elsewhere, perhaps in overall statutory scheme; this regulation comes out of nowhere.
> **Questions under Issue (A) of Plaintiff's brief:**
> (QA)1. By what statutory authority does the Defendant seek to tax the Plaintiff, as it relates to having been named as a subject of the tax sought?

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

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

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

(QA)5. Until Congress names as subject the Plaintiff, the Defendant is powerless to do so much as approach the Plaintiff regarding any matter governed by 26 USC for lack of personam jurisdiction, right?

Claims under Issue (B) of Plaintiff's brief:

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

Questions under Issue (B) of Plaintiff's brief:

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

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

(QB)3. Is 26 USC § 7621 a grant of leave for the Secretary of the Treasury to operate outside of Washington D.C. when Congress only mentions the Office of the President of the United States there?

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

Under Issue (C):

3.24 Defendant has no requirement to file any form or tax return other than the Form 2555 Foreign Earned Income return. To file any form other than the Form 2555, Plaintiff must violate 26 CFR 602.101, a regulation that must be complied with. Because only the Form 2555 is prescribed to the Plaintiff, the Plaintiff has no filing requirements due to the fact that all compensation received during the years in controversy is rightfully deemed to **not**

be "foreign earned." Compliance protects Plaintiff's property.

3.25 Plaintiff has no gross income to report on the only form that the law permits one with Plaintiff's status to file. The Defendant has acted in total disregard for the provisions of 26 CFR 602.101. This is Plaintiff's belief, and until it is dispelled with open discussion and logical application of law to the contrary Plaintiff will continue to act upon it.

Questions under Issue (C):

(QC)1. What is the OMB number of the form prescribed under 26 CFR 602.101 as that form required of the Plaintiff?

(QC)2. Can the Plaintiff ignore the provisions of 26 CFR 602.101 and rather file the form that the Defendant will accept?

(QC)3. If the Plaintiff can ignore 26 CFR 602.101, what are all of the other regulations, statutes, or other provisions that the Plaintiff can simply ignore?"

***END quote** of *Walden*.

1.22 The United States was likewise unable to speak at all of the law on the 4 U.S.C. § 72 and 26 CFR 602.101 claims in *U.S. v. Herold*, which were his Issues A and E respectively in his motion to dismiss which was ignored by the Court (Defendant judge KING) for four months to allow the IRS to destroy his life while the law remained a secret. Mr. Herold was finally forced to plead to one count of failure to file (26 U.S.C. § 7203) and forget about his belief in Congress, just so he could set about supporting his family. (See *U.S. v. Herold*, U.S. Dist. Court, Portland, OR **#99**-161-KI).

1.23 Defendants and each of them were again made fully aware of all of this when Ray Gebauer served his Constructive Notice (in kind to *Lewis v. U.S.*, *supra*) upon Defendant ROBERT WESTINGHOUSE shortly after it was filed behind an FRCvP 27 Complaint to perpetuate testimony. (See U.S. Dist. Court, Seattle, WA, *Gebauer v. United States, et al.*, C-**05**-1513-MAT, filed 9/2/05.) At a 9/21/05 meeting in the U.S. Attorney's office in Seattle, WA (700 Stewart Street, U.S. Dist. Court), Defendant WESTINGHOUSE pointed directly at this Notice which sat on the table and

stated that it did not move him one bit; that it meant nothing to him. (See **Cover letter at Tab #1 hereto**, sworn statement of witness David R. Myrland who attended).

1.24 Defendants and each of them failed to report this first hand knowledge of felonious misconduct as required under 18 U.S.C. § 4 Misprision of felony, as evidenced by the fact that all conduct complained of is ongoing.

II. EXHIBITS IN SUPPORT OF THIS COMPLAINT.

2.1 An emphasis has been placed upon minimizing the volume of exhibits. All exhibits are incorporated by this reference as if fully restated herein.

Exhibit 1. Protective Order issued by U.S. Dist. Court (Austin, TX) in *Walden, supra*. **Tab #8**.

Exhibit 2. 26 CFR 1.83-6 ([T.D. 7554, 43 FR 31919, July 24, **1978**, as amended by T.D. 8599, July 19, **1995**; T.D. 8883, 65 FR 31076, May 16, 2000; T.D. 9092, 68 FR 54352, Sept. 17, 2003]) **amendment described** by Complainant David Myrland. **See also - "Proposed Regulations, ¶ 49,538, Proposed Amendments of Regulations (EE-81-88)**, Federal Register 12/5/**94**." **Tab #9**.

Exhibit 3. Affidavit of Complainant Tim Garrison, accountant of thirty years, describing the arbitrary elements of dealing directly with the IRS on behalf of clients with tax controversies. **Tab #10**.

Exhibit 4. IRS Publication 17 "Tax Guide for Individuals" excerpts showing reflection of statutes claimed by Petitioner to have been violated. Here, the IRS clearly states that all property is a cost, and that Petitioner's cost is the value of personal services. Memo at **Issue D** at pg.27 - 38, **Tab #11**.

Exhibit 5. Three annually consecutive copies of 26 CFR 602.101 as amended showing its evolvement over such period regarding return filing requirements found there. Included is Treasury Decision ("T.D.") 8335 which caused the *amendment* to this regulation which stands today. Memo at **Issue C** at pg.26 - 27, **Tab #12**.

2.2 All briefed claims are based on law and not in any way upon theory. The law alone must dispose of this, which proves the Complainants to possess good faith in this filing. The fairness brought to the matter by such responsible and articulately briefed representation of the law as it exists demands a response in kind, be it opposed or in agreement; America is a *nation of laws*.

III. ELEMENTS OF RACKETEERING & OVERT ACTS.

3.1 The Defendants and each of them are actors in an excessively harsh and unlawful artifice designed to subvert Congress and its taxation authority in ways which render all Americans subject to taxation without representation paying amounts they do not owe. Inquiries, levies, liens, determinations, assessments, and prosecutions are visited upon Americans without consideration or application of key fundamental provisions inside 26 USC, and one in 4 U.S.C., as briefed.

3.2 The conduct of the Defendants has given rise to entire industries of CPAs, lawyers, and tax return preparation services which are all wrongfully enriched through this. The mere fact that the Tax Code and regulations are 25+ lbs. of rice paper about which the Courts refuse to speak renders these persons largely *non culpabilis* out of justifiable ignorance. Elements of this racketeering and extortion scheme (See Memo at pgs.18 - 46, **Tab #5**) and artifice include but are not limited to:

> 1. The Secretary of the Treasury promulgated and has been enforcing a regulation which derogates 26 U.S.C. § 1 by implicating U.S. Citizens in chapter 1 of the statutory scheme at 26 U.S.C. (See 26 U.S.C. §§ 7801, 7805; 26 CFR 1.1-1; **Issue A** of Memo pg.18 - 21, **Tab #5**). Income taxes not imposed by Congress violate the 16th Amdt.
>
> **After** implicating U.S. Citizens through the promulgation of 26 CFR 1.1-1, Defendant SNOW's predecessor promulgated a regulation essential to apply the Form W-4 to said subjects, placing it in chapter 1 regs. under § 83. This regulation sought to deprive employers of a deduction of the wages paid to employees as a cost of doing business when they fail to deduct and withhold upon said wages pursuant to § 3402 (Form W-4).

Said regulation was challenged in 1994 in U.S. Tax Court petitions on three grounds and was thereafter rewritten to remove said deprivation, but it kept the other two challenged requirements in place under a clouded and convoluted reference to § 6041. Request all working papers regarding this amendment. (See Ex.2, description by Complainant D. Myrland regarding 26 CFR 1.83-6 and its 1995 amendment, **Tab #9**).

2. Despite the constraints placed upon the Office of the Secretary of the Treasury under 4 U.S.C. § 72, said office attached to the Seat of government operates in the fifty freely associated compact states without said leave to obtain monies from Americans which they do not owe under the law. All activities complained of violate 4 U.S.C. § 72. (See **Issue B** of Memo pg.21 - 23, **Tab #5**).

3. OMB regulation 26 CFR 602.101 was promulgated to implement the Paperwork Reduction Act 1980, and it clearly imposes the requirement for Americans such as the Complainants to file one specific form, and it is not the Form 1040. The form required thereunder is the Form 2555 "Foreign Earned Income" form. Compliance with this regulation by the Defendants limits reporting requirements to gross income which <u>was not</u> earned within the fifty freely associated compact states. All activities of the Defendants in relation to domestically (onshore) earned income is in violation of 26 CFR 602.101. (See **Issue C** of Memo pg.24 - 25, **Tab #5**).

4. If 26 U.S.C. actually applied to Americans in the fifty freely associated compact states, its §§ 83(a) and 1012 recognize <u>all property</u> as a cost, but Defendants arbitrarily and without lawful authority exclude *some* property from this all inclusive mandate, even going so far as to contradict their own contentions affirmed by the U.S. Supreme Court four times, holding that the scope of "any property" means <u>everything</u> unless an exclusion <u>in the law</u> can be pointed to. This is the difference between the value of personal services being taxed as gross income, and said property being recognized as a cost. The IRS must contradict four Supreme Court decisions concurring with the position of the DOJ to tax said property, and the DOJ must do the same to bring charges against one who received only compensation for services. The DOJ argues successfully in the Supreme Court that "any" means <u>all property</u>, then argues that it can arbitrarily exclude personal services or labor from "any" so as to imprison Americans for tax crimes and related offenses.

Ignorance of fundamental accounting and maxims of income taxation have one saying that *income* is not defined in the Tax Code. Income is profit and includable in gross income, while cost is deductible from gross income and will not be taxed as profit. Cost defines *income*, and costs related to the individual's rendering services and receiving only their fair market value in return are

determined and provided for in the Tax Code as briefed. Cost is defined as "the value of any money or property paid" to acquire compensation. All activities of the Defendants in relation to compensation for personal services actually rendered violate 26 U.S.C. §§ 83, 212, 1001, 1011, and 1012. (See **Issue D** of Memo pg.25 - 35, **Tab #5**).

5. The definition of the term "citizen" in chapter 21 FICA does not use the term "includes" in its language, and it expressly excludes U.S. Citizens from its purview. (See § 3121(e)). "Includes" is used to justify the broadening of the scope of statutory definitions to apply to anyone not listed in said definition, *e.g.*, § 3401(c) Employee. To broaden the FICA definition of "citizen" a regulation using *includes* was promulgated to broaden the application of the statutory definition in § 3121(e). (See 26 CFR 31.0-2(a)(1); 31.3121(e)-1(b)).

Social Security income taxes imposed by 26 U.S.C. chapters 2 and 21 originate from 1939 Tax Code § 3811 which was split into said chapters upon the Tax Code's rewrite in 1954. (See 26 U.S.C. § 7651(5)(A)). The political subject named in statute in those chapters is not the U.S. Citizen but rather is only citizens of the U.S. Possessions, expressly excluding Americans from the purview of said chapters. All activities of the Defendants relative to Social Security taxes and administration which affect U.S. Citizens are *ultra vires* and are thus a violation of 26 U.S.C. § 7214. (See Memo at **Issue A**, pg.18 - 21, 54 at ¶¶ 5.5 to 5.9, **Tab #5**).

6. Defendant IRS' Assessment authority is limited by statute to unpaid taxes duly paid by stamp. (See 1939 Tax Code § 3640; 26 U.S.C. 6201(a)). So as to assess other taxes, Defendant SNOW promulgated or exploits a regulation which derogates this restriction so as to [authorize] the assessment of "all taxes imposed by the Internal Revenue Code of 1954." All activities of the Defendants relative to the assessment, *a fortiori*, the collection by distraint, of taxes not duly paid by stamp are acts *ultra vires*. (See 26 CFR 301.6201-1; **Issue E** of Memo pg.38 - 40, **Tab #5**).

7. Wage withholding under the Form W-4 appears voluntary under 26 U.S.C. § 3402(n). Defendant SNOW promulgated or exploits regulations which allow any such form, to which the IRS takes exception, to be dishonored so as to allow full amounts to be deducted from wages until its filer fully discloses their affairs to justify the meager deductions the IRS allows. (See 26 CFR 31.3402(f)(2)-1(g)(5)(ii), (iii)). Under these regulations the language of § 3402(n) is wholly unavailable.

8. No statutory authority is found to impose and combine chapter 1 income taxes with chapter 2 Social Security - self employed. Defendant SNOW promulgated

or exploits a regulation to facilitate this wrongful taking at 26 CFR 1.1401-1(a). It is impossible to be both a U.S. Citizen such as the Complainants and the citizen of the U.S. Possessions implicated as subject to chapter 2. (See 26 U.S.C. § 1402(b)).

9. Social Security on wage or salary (FICA chapter 21) is an income tax, the compensation subjected thereto therefore comprising property to which §§ 83(a) and 1012 apply. No statute permits the IRS' refusal to likewise apply §§ 63(c) and 151(d) to said compensation. This facilitates the imposition of FICA on $7200 which is actually and rightfully excluded from gross income as a standard deduction and personal exemption, just as is allowed for the purposes of the § 1 income tax [on compensation].

This aspect is grounded in statutory scheme and is easily reasoned into understanding. We'll begin where the IRS begins, by including all wage or salary compensation into § 61(a) gross income without allowing §§ 83, 212, 1001, 1011, and 1012 to operate as briefed. (Issue D of Memorandum). Begin by including all such compensation to be taxed under FICA income tax (chapter 21 Social Security) in § 61(a) gross income. For those who do not itemize their deductions (*e.g.*, Form 1040EZ) the equation for the chapter 1 income tax under § 1 goes from § 61(a) to allowable deductions under §§ 63(c) and 151(d) to subtract an amount equal to $7200 (in 2000, line 5, Form 1040EZ). This yields an amount called "taxable income" in § 63(a) ("gross income minus deductions"). *Taxable* amounts now established, the individual goes to § 1 to be taxed.

In that last step we see taxation occurring only after allowable deductions are taken. Since § 83(a) applies to FICA wages, there's simply no force in statute to require that other chapter 1 provisions would not also apply to said wages, provisions like §§ 63(c) and 151(d). FICA is imposed upon $7200 rightfully deducted from gross income, not included in gross income. This constitutes the theft of approx. $500 from every individual wage earner who does not itemize. For possible proof of this, one might subpoena all forms found in 26 CFR 602.101 at 31.3101 to 31.3128. None of those forms are employed in relation to the deduction of FICA from compensation.

10. Under "Notice of lien" real property across America is encumbered, in the absence of a federal court action, confiscated and sold under "Notice of lien" for alleged tax debts, while statute apparently authorizes such acts only upon filing a civil action to accomplish such. (See 26 U.S.C. § 7403).

11. Although statute only allows the IRS to levy on the rights to property owed to public servants, private sector employees and bank account holders are levied and their property seized by distraint. (See 26 U.S.C. § 6331(a)).

12. Every contradiction of the IRS' unlawfulness precipitates monetary penalties for frivolity (the law is *frivolous*) under 26 U.S.C. subchapter 68B §§ 6702 and 6673 (frivolous returns, frivolous Tax Court petition respectively), all failures to pay what the IRS demands are subjected to the interest imposed by § 6654 and others, and federal courts penalize all who seek to impose the edict of Congress in a way which changes the IRS in any way.

Abuse of § 6702 (frivolous returns) is dispensed upon anyone contradicting the IRS via entries on a tax return or statement in lieu. This section is used to penalize even the smallest of contradictions to the IRS' mandate, made by mistake or otherwise, in $500 increments. Even merely filing the wrong tax return (according to the IRS) can get one fined and levied to death while the IRS keeps the operation of the law a secret. (Inquire, Kristine A. York, SSN #537-48-7640, levied into poverty by "H.D.Watkins" (Tacoma, WA) for filing 1040NRs, died in early 1994 of stress induced digestive tract paralysis lasting 30 days, over $2500).

13. With the exception of penal statutes in 26 U.S.C. ch.75, the prosecutions of Americans under 26 U.S.C. are conducted without reference to the law. Defendants DOJ and WESTINGHOUSE imprison Americans by proving residency which they say imposes the [tax], and by convincing juries that the defendant *believes* he has a duty despite law and evidence to the contrary. Seek proof that §§ 83(a) and 1012 were applied in prosecutions of employees or self employed individuals, then go slowly through that statutory language and compare the DOJ's interpretation of 26 CFR 1.83-3(g)'s "any property" to how said term was interpreted in the four Supreme Court decisions the DOJ won but which it must contradict to prosecute or to even tax said individual's compensation. All such prosecutions have therefore been conducted in a context void of probable cause, and therefore without lawful authority as briefed at **Issue F** of Memo pg.38 - 40, **Tab #5**.

14. Employers are penalized and perhaps imprisoned (*Simkanin*) for failure to deduct sums from compensation paid to employees while the law is kept a secret from them, and when the law does not operate to require it as briefed.

15. All amounts collected from Americans in the fifty freely associated compact states are imposed through the IRS' and DOJ's indifference to the citizen in 26 U.S.C. §§ 1402(b), and 3121(e) to obtain Social Security from individuals and employers, and through having implicated Americans in relation to the § 1 income taxes (including **capital gains**, § 1(h)) through regulation alone. (26 CFR 1.1-1). All three of these revenue streams are therefore the wrongful taking of property under threat, duress, coercion, and color of official right. All three of

these revenue streams which relate to **compensation for services** of the individual are maintained through a willful misreading of "any property" and "cash or other property" to arbitrarily exclude the value of the services performed from the category of cost, moving said sums unlawfully into the category of gross income or *profit*.

16. When one proves that the law is perfect, and if after an investigation of an American it can find nothing wrong with said person, the IRS will slander that individual, penalizing them for promoting an abusive tax shelter (Congress) to the tune of ONE PENNY, then it will pay it *for them* ("credit to your account"), leaving a derogatory comment on their administrative record which requires that they then pay $250 to federal court to challenge a penalty of ZERO, as the IRS did twice to Complainant David R. Myrland over the summer of 2005. Congress is an abusive tax shelter. (See **Tab #1** Cover letter (verified) from Myrland).

17. The $500 penalty threatened on the back of U.S. Passport applications for failure to supply a Social Security number on said application only pertains to those on corporate business or those seeking to transfer stock or dividends according to implementing regulations. (Form #1405-0004; 26 U.S.C. 6039E; 26 CFR 1.6039). Apply for a passport, do not supply an SS#, and you'll be penalized $500 under 26 U.S.C. § 6039E.

18. U.S. Tax Court will penalize those who fail to bring issues at law for it to decide, and it will penalize those who bring issues at law for it to decide:

> "...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, 173 (CA8 1980).

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**).

To U.S. Tax Court, Congress is the harbinger of frivolity. "I will concede all facts of the case today if they'd just tell me how to comply with § 83." This

earned Steven Talmage a $6500 penalty in U.S. Tax Court. (See Tax Court docket #339-95, final Order (**T.C. Memo 1996-114**) at its pgs.8, 19, 20). A father of four penalized two or three months' pay for asking how to comply so he'd be left alone. This [decision] is reviewed in the attached Memo at its pg.52 - 56, ¶¶ 5.1 to 5.9 (**Tab #5**), and is diametrically opposed to DOJ and Supreme Court in two cases preceding it and in two cases which occur thereafter, as it relates to § 83(a)'s implementing regulations' use of "any property" and § 1012's "cash or other property." Defendants obtain their compensation and pensions by holding that Congress is as frivolous as all those Americans who believe it is not; **taxation without representation**.

19. The U.S. Department of Justice and U.S. District Court issue and enforce protective orders prohibiting Americans from accessing the law. Like U.S. Tax Court, federal courts impose penalties for arguing statute effectively against the IRS.

3.3 This is the short list of acts committed under standard operating procedure, but it contains the most substantive elements relating to unlawful revenue streams and intimidation.

IV. VIOLATIONS OF FEDERAL CRIMINAL STATUTES.

4.1 All exhibits, facts, and writings filed herewith shall be deemed to be incorporated by this reference into each count alleged below as if fully restated therein. All acts complained of herein were willfully and intentionally committed by the Defendants with full knowledge of law to the contrary.

4.2 All persons similarly situated to above named Defendants shall be deemed to have been personally named under applicable allegations made herein. "As briefed" shall be deemed instruction to refer to the Memorandum filed in support of this Complaint. **Counts One through Twenty Seven are as follows**:

COUNT ONE; Extortion by officers or employees of the United States.

4.3 Individual Defendants and each of them, with the exception of Defendant NWA, operate the racketeering scheme complained of herein from within their

respective public offices and are thus in violation of 18 U.S.C. § 872 Extortion by officers or employees of the United States.

COUNT TWO; Prohibited activities.

4.4 Individual Defendants and each of them, with the exception of Defendant NWA, operate and contribute to a scheme whereby every American pays taxes not owed but rather imposed through regulation and through outright defiance of statutory definitions which greatly limit their authority and personam jurisdiction. Through regulatory deviation from and derogation of statute, through judicial malfeasance of office and dereliction of duty, and through criminal trespass, false arrest and imprisonment, these Defendants all knowingly conspire to intimidate and oppress Americans into violating the law in many ways to report as taxable those amounts which clearly are not for the purposes of deriving compensation and pensions. The taxing scheme of the these Defendants is contrary to law, as briefed, and is therefore a violation of 18 U.S.C. 1962(a) Prohibited activities.

COUNT THREE; Offenses by officers and employees of the United States.

4.5 Individual Defendants and each of them, with the exception of Defendant NWA, have engaged in a proven pattern of extortion and willful oppression, threat and intimidation, with intent to defeat the proper application of 26 U.S.C., by conspiring and colluding with intent to defraud the United States, all through omitted acts and by making false entries on administrative record, and by failing to report it to the Secretary of the Treasury, by false prosecution, mock trials and unlawful imprisonment, routinely demand, receive, and collect by distraint more or other sums than are provided for by law under IRS' standard operating procedure as briefed, and is therefore in violation of 26 U.S.C. 7214 Offenses by officers and employees of the United States.

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COUNT FOUR; Receiving proceeds of extortion.

4.6 With the exception of Defendant NWA, Individual Defendants and each of them benefit in the form of compensation and pensions paid or to be paid to the employees of the United States complained of herein. This revenue stream is derived through the extortion activities complained of herein. These Defendants and each of them, and all those similarly situated, receive or otherwise handle and dispose of the proceeds of the extortion activities as defined in 18 U.S.C. § 872 and as briefed, and are therefore in violation of 18 U.S.C. § 880 Receiving proceeds of extortion.

COUNT FIVE; Interference with commerce by threats or violence.

4.7 Defendants and each of them have acted to extort by force and intimidation Federal Reserve Notes (fn. [1]) from Americans by misapplying 26 U.S.C. to them as described herein and as briefed, and have acted to deprive them of FRNs which otherwise would have gone into the American economy through spending in domestic and international commerce. By unlawfully obtaining and channeling FRNs into government, and by placing FRNs into their own pockets in the form of compensation and pensions, enriching private industry in the process, Defendants and each of them are in violation of 18 U.S.C. § 1951(a) Interference with commerce by threats or violence.

COUNTS SIX and SEVEN; Conspiracy to deprive and Deprivation of rights.

4.8 Defendants and each of them, with the exception of Defendant NWA, caused and upheld assessments of unpaid taxes which are not duly paid by stamp. While statutory authority to assess 26 U.S.C. taxes is limited to those duly paid by stamp, Defendants operate to assess other taxes imposed by the Internal Revenue Code of 1954 under a regulation written to derogate 26 U.S.C. § 6201 as briefed, using such derogation to foreclose by distraint upon assessed amounts to obtain property of every nature. (See Memo at Issue E, pg.36 - 38, **Tab #5**). Each and all of such assessments are

made in an ongoing conspiracy to violate rights to due process, and with a history of violations of rights to due process, in violation of 18 U.S.C. § 241, and 242.

COUNT EIGHT; Deprivation of rights.

4.9 In outright defiance of their Oaths to uphold the Constitution, Defendants COURT, YEAKEL, and BASS conspired to cause the issuance of an Order barring Mr. Walden from asking these questions under 5 U.S.C. §§ 701-706 Administrative Procedures Act, thus barring access to the operation of the law and thus the mandate of his duly elected representatives.

4.10 Defendants BASS and YEAKEL violated Jim L. Walden's constitutional rights to due process when seeking and issuing an order of restraint against inquiries into the law through a protective order (**Tab #8**) and against Walden's asking questions about governing provisions disclosed in his original filing under FRCvP 27 to perpetuate testimony, thus placing the Courts and the IRS in control of his property and his duties instead of Congress. This constitutes a clear violation of 18 U.S.C. § 242 Deprivation of rights.

COUNT NINE; Deprivation of rights.

4.11 Defendant KING violated Lee Herold's constitutional rights to due process and to face his accuser when he refused to conduct a hearing upon Mr. Herold's motion to dismiss for lack of personam jurisdiction, and by proceeding when the record remained void of any proof of such jurisdiction. This constitutes an ongoing violation of 18 U.S.C. § 242 Deprivation of rights.

COUNT TEN; Deprivation of rights.

4.12 Defendants KING and PERKINS violated and are violating Lee Herold's constitutional rights to due process and to property by ordering that he commence a

[1] Securities in commerce, see 15 U.S.C. § 77b.(a)(1), (7).

pattern of satisfying the IRS' demand for sums he does not owe, despite full knowledge from Mr. Herold's briefing that the Court was wholly lacking personam jurisdiction under the laws used to prosecute this 26 U.S.C. § 7203 failure to file case. By obtaining property from Mr. Herold while refusing to prove personam jurisdiction upon challenges to such, and by obtaining and accepting a guilty plea and property not owed by Mr. Herold as briefed there, these Defendants violated Mr. Herold's rights to due process, liberty, and property, in an ongoing violation of 18 U.S.C. § 242 Deprivation of rights.

COUNT ELEVEN; Prohibited activities.

4.13 With the exception of Defendant NWA, Defendants and each of them operate to collect, receive, and transfer sums collected from employers in America under the guise of FICA intended to match payments made by employees and purportedly imposed by § 3111 in ch. 21, with stark indifference to the definition of "citizen" there in § 3121(e). These are sums clearly not owed but which *appear* legitimate only through the term "includes" in regulations under § 3121(e), thus *allowing* these Defendants to acquire what statute does not impose. NORTHWEST AIRLINES (hereinafter "NWA") and all those similarly situated as domestic employers have been victimized in kind when their employees pay FICA. A protective Order in *Walden*, *supra*, was required to keep this issue from indulgence. (See **Tab #5** Memo at Issue A, pg.18 - 21). These Defendants have willfully and intentionally acted in relation to the imposition, acquisition, and disposal of § 3111 taxes so as to benefit in the form of compensation, pensions, and other. This shows Defendants to be willing actors in the racketeering scheme complained of herein and as briefed, in violation of 18 U.S.C. § 1962(a), (c), and (d) Prohibited activities.

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COUNT TWELVE; Mailing threatening communications

4.14 Defendants and each of them willfully and with full knowledge as to the criminal nature of their activities used and are using the U.S. mails to convey the obligations required under their racketeering scheme, in violation of 18 U.S.C. § 876(d) Mailing threatening communications.

COUNT THIRTEEN; False declarations before grand jury or court.

4.15 Defendants GONZALES or his predecessor, IRS, WESTINGHOUSE, and all similarly situated U.S. Attorneys, utter false declarations to Grand Juries and to courts, as witnesses or as prosecutors, whenever seeking remedy over a tax known by them to be **imposed by regulation alone** as briefed, and by pursuing remedy for sums not owed but which they say are imposed on the value of personal services as briefed, and by doing same with regards to domestically earned income as briefed, and by doing same in relation to capital gains tax in relation to domestically derived profits by Americans as briefed, and by doing same in relation to Social Security taxes as briefed, showing each and all of these Defendant to be in violation of 18 U.S.C. § 1623 False declarations before grand jury or court.

COUNTS FOURTEEN through EIGHTEEN; (enumerated).

4.16 Defendants COURT, and GONZALES and those similarly situated (John Ashcroft, Edward Groves) falsely prosecuted both LaMarr Hardy and his wife for 26 U.S.C. § 7203 Failure to file violations (three counts). This trial was to collect taxes unlawfully imposed on the value of personal services compensation (commissions), and imposed solely through regulation and without personam jurisdiction as Defendants GONZALES and DOJ understood from the time of their receipt of the *Lewis v. IRS* memorandum in San Francisco in 2003. (As briefed, see *Lewis'* Issues A, B, C, and D at pg.24 through 39, U.S. Dist. Court at San Francisco, at #C-03-4101-JSW; See same Issues (A through D pg.18 - 34, **Tab #5**). Two counts under 18 U.S.C. § 371 Conspiracy

to defraud the United States fall to this as well. (See U.S. Dist. Court, Hawaii, #O2-00133-SOM-BMK).

4.17 Apparently, Mr. Hardy and his wife were each charged with three counts of failure to file Forms 2555 to report foreign earned income when in fact statements in lieu were filed and accepted. Respondent points to only domestically earned compensation as creating the requirement to file a return but needs a protective Order in *Walden* to keep from having to speak of 26 CFR 602.101, which of course must be complied with. Two counts of 18 U.S.C. § 371 Conspiracy to defraud the United States also fail under this defect.

4.18 With full knowledge that Mr. Hardy does not meet the statutory definition of the term "person" in the chapter under which he's charged (See Memo at pg.38 - 40, **Tab #5**), GONZALES and similarly situated individuals decided to apply said provision as if it were an *inclusion* instead of a definition as Congress has called it. This derogation of statute allowed otherwise inapplicable charges to be brought, resulting in false arrest, prosecution, and imprisonment. From -

http://www.**irs.gov/compliance/enforcement**/article/0,,id=129118,00.html

"Husband and Wife Sentenced for Tax Evasion Schemes - On August 31, 2005, in Honolulu, HI, Royal Lamarr Hardy was sentenced to **156-months in prison**, followed by **36 months supervised release**, ordered to pay a fine in the amount of $59,267.88, costs of prosecution in the amount of $59,267.88, and $197,555 in restitution to Internal Revenue Service for selling tax evasion schemes and failing to file his own income tax returns. **Hardy's wife** and co-defendant, Ursula Supnet, was also **sentenced to 60 months in prison**, followed by **36 months of supervised release**, and restitution of $197,555.

Two other co-defendants, Michael L. Kailing, a self-styled tax accountant, and Fred M. Ortiz, a tax-return preparer, were each sentenced yesterday to **36 months confinement and three years of supervised release**. On May 13, 2005, a federal jury convicted Hardy and his co-defendants of conspiring to defraud the United States by selling various tax-evasion schemes over several years for the purpose of impeding the functions of the Internal Revenue Service. Hardy and Supnet were each convicted of a second conspiracy to defraud the United States with respect to their own income taxes. Hardy was also convicted of three counts of willfully ***failing to file his own income tax returns*** for 1995, 1996, and 2001. Hardy and his co-defendants were convicted of promoting what they called the Reliance Defense from 1985 to 2002, which consisted of books and binders filled with materials purporting to show a studied conclusion that the federal income tax laws were voluntary.

By "voluntary," the defendants meant that the laws imposed no legal obligation to file a return or pay a tax. The defendants marketed these materials throughout the United States under the business names The Research Foundation and—earlier—The Cornerstones of Freedom. In addition, Hardy's organization promoted the use of trusts and bankruptcy proceedings to evade the collection of income taxes. Senior U.S. District Court Judge Edward Rafeedie found that these schemes cost the United States treasury more than $8,600,000." (Emphasis added, fn. [2])

4.19 This entire affair and all those similarly brought are over amounts imposed solely through regulation (26 CFR 1.1-1, **Tab #5**, Issue A pg.18 - 21), without requisite leave as under 4 U.S.C. § 72 to enforce 26 USC (**Tab #5**, Issue B pg.21 - 23), in violation of and with indifference to 26 CFR 602.101 (**Tab #5**, Issue C pg.24 - 25), and in large part in violation of and with indifference to §§ 83(a) and 1012 which explain how to tax compensation for services. (See **Tab #5**, Issue D pg.25 - 35). All proceedings in said case were conducted with substantial use and employment of the U.S. mails to send and to serve legal process of every nature, sent by and demanded by the Defendants COURT, DOJ, GONZALES and those similarly situated. All of this constitutes a violation of the following statutes:

Count 14: 18 U.S.C. § 241 Conspiracy to deprive - Liberty and property in the form of fines and other penal sanctions as well as revenue streams to be generated in the future by the falsely convicted paying to keep their liberty. Untold expense has already been visited upon those convicted in the form of legal fees and other costs associated with the defense against such charges.

Count 15: 18 U.S.C. § 242 Deprivation of liberty - False imprisonment.

Count 16: 18 U.S.C. § 1962(a) Racketeering and prohibited activities.

Count 17: 18 U.S.C. § 872 Extortion by officers or employees of the United States.

Count 18: 18 U.S.C. § 876(d) Mailing threatening communications.

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[2] Second Superceding indictment (pg.24-26) actually said, "[F]ailed to make an income tax return," while 26 U.S.C. § 6011 clearly provides for a statement in lieu of return as an option, which Hardy has done for twenty years.

COUNT NINETEEN; Offenses by officers and employees of the United States.

4.20 Defendants SNOW, EVERSON and MARTIN conspired with others to demand sums other than those provided for by law when they penalized Mr. Myrland twice for promoting abusive tax shelters when in fact he recommends H&R Block as a shield against IRS abuse, fining him $.01 (one penny) each time and paying it for him through a "credit to your account," then saying that he owed "NONE." (See **Tab #1**, attached to letter there). These conspirators and each of them have contrived a falsehood to write and mail demands for sums other than provided for by law in this, an ongoing violation (they are still demanding "NONE" and clouding administrative record with falsities) of 26 U.S.C. § 7214 Offenses by officers and employees of the United States.

COUNT TWENTY; Conspiracy to deprive.

4.21 Defendants SNOW, EVERSON and MARTIN acted in concert as conspirators with others to violate David Myrland's constitutional rights to due process when he and others yet unnamed fabricated the allegation that Myrland was promoting 'corporation sole' or other trust type instrument, and when they failed to find anything wrong with Myrland's curriculum which they received via U.S. Post shortly after harassing Mr. Myrland. Said failure resulted in others in the IRS falsely penalizing Mr. Myrland twice for promoting abusive tax shelters, fining him $.01 (one penny) each time and paying it for him through a "credit to your account," then saying that he owed "NONE." The conspirators and each of them have deprived David Myrland of rights to due process through this contrivance and are therefore in an ongoing violation of 18 U.S.C. § 241 Conspiracy to deprive.

COUNT TWENTY ONE; Prohibited activities.

4.22 Defendants SNOW, EVERSON and MARTIN acted as they did in COUNT TWENTY, *supra*, in an attempt to cost Mr. Myrland a U.S. District Court filing fee of $250.00 (U.S., Federal Reserve Notes) to commence a civil action to challenge penalties

of "NONE," thus unlawfully causing him the loss of property which Defendant COURT could then enjoy as its own. This mandatory Complaint is likely a better way to receive better treatment than Defendant COURT is willing to dispense. This conduct on the part of EVERSON and MARTIN therefore constitutes an act in furtherance of a violation of 18 U.S.C. § 1962(c) on the part of Defendant COURT, and as such, the conduct constitutes a violation of 18 U.S.C. § 1962(d) Prohibited activities.

COUNT TWENTY TWO; Conspiracy to deprive.

4.23 Defendants SNOW, EVERSON, MARTIN and other co-conspirators deprived Mr. Myrland of his rights to due process in a scheme to defame him and to libel him (See COUNT NINETEEN through TWENTY ONE) in hopes of someday discrediting him without cause to a Grand Jury, in an ongoing conspiracy to deprive him of his constitutional rights to liberty and to property, in violation of 18 U.S.C. § 241 Conspiracy to deprive.

COUNT TWENTY THREE; Frauds and swindles.

4.24 With the exception of Defendant NWA, Defendants and each of them, as a matter of routine, employed the U.S. mails to raise and enhance revenue streams in their artifice of fraud of applying 26 U.S.C. in ways known by them to be unlawful, doing so for the purposes of obtaining property not owed to them by Americans. Billing for court fees and fines, summons and arrest warrants, notices of tax deficiencies and assessments, liens and levies and demands for tax returns, all of which are elements of 26 U.S.C. enforcement but mailed or otherwise sent as fraudulent representations to Americans upon which 26 U.S.C. does not operate as enforced. This conduct on the part of these Defendants therefore constitutes a violation of 18 U.S.C. § 1341 Frauds and swindles.

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COUNT TWENTY FOUR; Fraud by wire, radio, or television.

4.25 Defendants and each them, with the exception of Defendant NWA, have used and relied upon television broadcasts, *i.e.*, news casts, advertisements about IRS services, and advertisements by those in private industry benefiting from the racketeering activities complained of herein, which convey warnings sounding of ominous and *Hurculean* like reach and authority which could instantly and forever cloud a title, mortgage, or deed, confiscating all in its path under a mere regulation which derogates statutory scheme into the fifty freely associated compact states.

4.26 By keeping this televised threat in front of those scheduled not for taxation but for extortion and false imprisonment, by maintaining this pattern of groundless coercion of the innocent to whom Defendants had sworn their protection in exchange for employment and their daily bread, these Defendants are in defiance and violation of 18 U.S.C. § 1343 Fraud by wire, radio, or television.

COUNT TWENTY FIVE; Search warrant procured maliciously.

4.27 With the exception of Defendant NWA, Defendants and each of them have issued or caused to be issued search warrants so as to gain access to property in the possession of those who were known to owe nothing in the way of 26 U.S.C. income taxes. When at all times in violation of law, as briefed, these Defendants operated in concert to unlawfully and without probable cause to seek, issue and obtain search warrants by which they could confiscate all property associated with small businesses, tax return preparers, and individuals who seek to contradict or question modes of IRS enforcement, or who seek to gain access to tax provisions which protect them. By issuing and obtaining search warrants relating to those over whom 26 U.S.C. provided no personam jurisdiction, these Defendants are in violation of 18 U.S.C. § 2235 Search warrant procured maliciously.

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COUNT TWENTY SIX; Misprision of felony.

4.28 All those Defendants with prior knowledge of the violations as briefed, some learning of some of the violations as early as 1994, chose not to protect taxpayers but rather chose to slander and penalize those who believed in the law so as to obtain compensation and pensions, even if it meant the extortion of money and other property from their own families to get it. This willful failure to act in relation to such offenses shows them to be in defiance and violation of 18 U.S.C. § 4 Misprision of felony.

COUNT TWENTY SEVEN; Accessory after the fact.

4.29 All those Defendants found to have prior knowledge as to the offenses against the United States have clearly chosen to participate and to lend assistance and comfort to others involved in the conduct complained of. Absent clear proof that the law does not operate as briefed, Defendant DOJ and many U.S. District and Tax Court Judges have clearly worked in concert to step around the law so as to perpetuate a racketeering scheme and to hinder or prevent the apprehension and trial of those parties rightfully culpable, going so far as to issue protective orders against the operation of the law. All such Defendants are thus in an ongoing violation of 18 U.S.C. § 3 Accessory after the fact.

V. CONCLUSION.

5.1 The public record is replete with cases of Americans seeking in futility to unveil the operation of the Tax Code at 26 U.S.C., and the reputation of the Defendants exposes further efforts to be a waste of time; America has no courts for tax law, or for the proper adjudication of matters concerning crimes relative thereto. Until the conclusions in the attached brief are responsibly dispelled, the Complainants feel compelled to believe them as valid conclusions at law, but also sees Congress entirely unwilling to protect itself from the judicial and executive branches and the usurpation of Congress' taxation authority for themselves through [organized] crime.

5.2 We the People view this willingness on the part of Congress to place every American at risk of false arrest, imprisonment, and the wrongful taking of all property they have and will have, in any instance where they've relied upon the written law. If Congress were to delegate its legislative authority to Defendants DOJ and COURT, and make GONZALES the *Czar of Law*, it would merely serve to add form to what already has vast and abhorrent substance.

5.3 Congress has been out of the taxation loop since the 1954 Tax Code was [enacted]. If Congress is to make it back into its rightful position of America's representative taxing authority, it must prove the conclusions as briefed are mistaken, or it must halt all prosecutions, open jail doors, order that records pertaining to all Americans be expunged, forgive all current debts alleged under 26 U.S.C., and it must act to cleanse government of all who can reasonably be said to have had the duty to act in ways they have not.

5.4 It is We the People who deserve the consideration in this matter, and it is not government or foreign countries and their citizens which should enter deliberations convened to correct this wrong. We the People have finished last to the IRS, right behind Congress, for as long as we can recall. "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." [3] Congress' failure to act upon this Complaint vitiates and abolishes the right to arrange one's affairs according to law and hands it straight into the possession and control of Defendant GONZALES.

5.5 When public servants set about requesting and issuing protective orders against the operation of the law, they have to believe the appearance of impropriety created thereby would precipitate a belief that all of these charges are valid, and that Americans would then find compulsion under 18 U.S.C. § 4 to complain as they have herein. Is Congress so far removed from the Defendants' daily concerns that they forgot

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[3] See *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937).

about said requirement? Are Americans presumed to be so ignorant that the law can be ignored in the performance of one's public service?

5.6 As it relates to 26 USC and domestically situated Americans and their businesses, the Defendants and each of them are a regulatory contrivance and racketeering scheme without a statutory basis upon which to rest the least of the conduct complained of. To make or break this *nation of laws* Congress must now choose to act or pass on its own authority.

VI. VERIFICATION.

6.1 Complainants (undersigned) bring this criminal complaint in good faith, and **they believe** in full that the allegations of lawlessness on the part of the Defendants above named are true and correct, and that they constitute the crimes alleged herein.

6.2 We, David R. Myrland, and Tim Garrison, do hereby declare under penalties of perjury that the foregoing statements are true and correct to the best of our individual personal knowledge and belief. We view the issuance of a protective Order constitutes a valid basis to presume that the law operates as briefed. Executed this 15th day of December, 2005.

David R. Myrland, Affiant/Complainant Tim Garrison, Affiant/Complainant

6.3 The above affirmation was duly subscribed and sworn to before me, this 15th day of December, 2005, by David R. Myrland, and by Tim Garrison.

6.4 I, Chandra E. Laferriere am a Notary under license from the State of Washington whose Commission expires on 5-1-2009, and be it known by my Hand and my Seal as follows:

Notary signature

CHANDRA E. LAFERRIERE NOTARY PUBLIC COMMISSION EXPIRES 5-1-2009 STATE OF WASHINGTON

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6.5 I, Lee Jerome Herold, do hereby declare under penalties of perjury (28 U.S.C. § 1746) that the statements and allegations made herein are true and correct to the very best of our individual personal knowledge. I view the issuance of a protective Order constitutes a valid basis to presume that the law operates as briefed. Executed this 26 day of the month of December 2005.

Lee Jerome Herold

Lee Jerome Herold, Affiant/Complainant

6.6 The above affirmation was subscribed and duly sworn to before me this 26 day of the month of December, 2005, by Lee Jerome Herold.

6.7 I, Alec Herold, am a Notary under license from the State of Oregon whose Commission expires 3-7-08, and be it known by my hand and my Seal as follows:

Notary signature

OFFICIAL SEAL
ALEC N HEROLD
NOTARY PUBLIC-OREGON
COMMISSION NO. 378155
MY COMMISSION EXPIRES MAR 7, 2008

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6.8 I, Greg Weiss, do hereby declare under penalties of perjury (28 U.S.C. § 1746) that the statements and allegations made herein are true and correct to the very best of our individual personal knowledge. I view the issuance of a protective Order constitutes a valid basis to presume that the law operates as briefed. Executed this 28 day of the month of November, 2005.

Greg Weiss, Affiant/Complainant

6.9 The above affirmation was subscribed and duly sworn to before me this 28 day of the month of November, 2005, by Greg Weiss.

6.10 I, Matt Krieger, am a Notary under license from the State of Oregon whose Commission expires 9/13/06, and be it known by my hand and my Seal as follows:

Notary signature

OFFICIAL SEAL
MATT KRIEGER
NOTARY PUBLIC - OREGON
COMMISSION NO. 359946
MY COMMISSION EXPIRES SEPT 13,2006

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6.11 I, Jim L. Walden, do hereby declare under penalties of perjury (28 U.S.C. § 1746) that the statements and allegations made herein are true and correct to the very best of our individual personal knowledge. I view the issuance of a protective Order constitutes a valid basis to presume that the law operates as briefed. Executed this 29th day of the month of November, 2005.

Jim L. Walden, Affiant/Complainant

6.12 The above affirmation was subscribed and duly sworn to before me this 29 day of the month of November, 2005, by Jim L. Walden.

6.13 I, Julie M Hardin, am a Notary under license from the State of Texas whose Commission expires 5/24/09, and be it known by my hand and my Seal as follows:

Notary signature

Julie M. Hardin
Notary Public
State of Texas
My Commission Expires
MAY 24, 2009

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6.14 I, Paul Broward, do hereby declare under penalties of perjury (28 U.S.C. § 1746) that the statements and allegations made herein are true and correct to the very best of our individual personal knowledge. I view the issuance of a protective Order constitutes a valid basis to presume that the law operates as briefed. Executed this 23rd. day of the month of November, 2005.

Paul J. Broward

Paul Broward, Affiant/Complainant

6.15 The above affirmation was subscribed and duly sworn to before me this 23rd day of the month of November, 2005, by Paul Broward.

6.16 I, Murshad Bobby Khan, am a Notary under license from the State of California whose Commission expires 04-20-08, and be it known by my hand and my Seal as follows:

Notary signature

MURSHAD BOBBY KHAN
COMM. # 1484931
NOTARY PUBLIC CALIFORNIA
ALAMEDA COUNTY
My Comm Expires April 20, 2008

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Tab #3

ABSTRACT OF PRIMARY CLAIMS:

In light of the issuance of protective orders to stifle discussion of the law, all claims will be stated in the affirmative as if affirmed by such issuance. Incident to Petitioner's being a resident Citizen of one of the fifty freely associated compact States ("countries," see 28 USC 297(b)), a Citizen of the United States, these things are certain regarding his status in relation to the Internal Revenue Service, 26 USC. In these ways, the IRS lacks personam jurisdiction over the Petitioner:

Issue A. Congress has not imposed the "tax" sought to be collected from the Petitioner, including Social Security, but rather such taxes have been imposed solely through regulation(s) promulgated under 26 USC 1, as briefed. IRS has no statutory authority over the Petitioner. See **Issue A**, ¶¶ 4.5 - 4.11.

Questions under Issue (A):

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

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

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

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

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

Issue B. The IRS is prohibited from speaking to the Petitioner by 4 USC 72, as briefed. IRS has no requisite statutory authority over the Petitioner. See **Issue B**, ¶¶ 4.12 - 4.19.

Questions under Issue (B):

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

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

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

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

Issue C. Until Petitioner makes "income" reportable on the Form 2555 Foreign Earned Income tax return, the IRS is not entitled to a tax return from Petitioner who must violate

regulation to file any other form, as briefed. IRS has no statutory authority over the Petitioner concerning domestically (in one of 50 States) earned income. See **Issue C**, ¶¶ 4.20 - 4.25.

Questions under Issue (C):

(QC)1. What is the OMB number of the form prescribed under 26 CFR 602.101 as that form required of the Petitioner?

(QC)2. Can the Petitioner ignore the provisions of 26 CFR 602.101 and rather file the form that the Respondent will accept?

(QC)3. If the Petitioner can ignore 26 CFR 602.101, what are all of the other regulations, statutes, or other provisions that the Petitioner can simply ignore?

Issue D. Petitioner must violate statute to include in gross income those amounts equal to the value of any money or property paid for personal compensation for services actually rendered. Petitioner has earned no amount of compensation duly classified as "gross income" and therefore is beyond the scope of the IRS' statutory authority when receiving only such amounts, as briefed. IRS has no statutory authority over the Petitioner when he receives only the FMV of his services as compensation. See **Issue D**, ¶¶ 4.26 - 4.48.

Questions under Issue (D):

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

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

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

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

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

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

Issue E. Concerning underpayments of ch.1 capital gains or income taxes, and taxes under ch.24 (Form W-4), ch.21 FICA, and ch.2 Self Employment tax, the respondent lacks assessment authority due to statutory confines. Collection by distraint cannot precede an assessment of liability. IRS therefore lacks statutory authority over the Petitioner. See **Issue E**, ¶¶ 4.49 - 4.54.

Questions under Issue (E):

(QE)1. Does the language of 1939 IRC § 3640 or 26 USC 6201(a) permit the Respondent to assess taxes other than those which have not been duly paid by stamp, taxes like those imposed by chapters 1, 2, 21, and 24?

(QE)2. Does 26 CFR 301.6201(a)-1 deviate from 26 USC 6201(a), unreasonably broadening limitations placed upon Respondent's assessment authority as intended by Congress?

Issue F. Since Petitioner's duties (if any) to comply with 26 USC arise from allegedly having received gross income, Petitioner is not the person in 26 USC 7343 whose duties from having been an officer, employee, or member of a corporation or partnership; the chapter of the Tax Code on crimes (ch.75) does not apply to the Petitioner, as briefed. See **Issue F**, ¶¶ 4.55 - 4.59. See also *Meese v. Keene*, *infra*, Supreme Court interpreting a statutory definition saying "includes" as all inclusive.

Questions under Issue (F):

(QF)1. Do the alleged duties of the Petitioner to file a statement or tax return arise from having been an officer, employee, or member of a corporation or partnership?

(QF)2. How can 26 USC § 7343 be rightfully deemed to be a "definition" when it is applied to persons, individuals, or other items or elements not expressly implicated by its language? Why did Congress call it a "definition" if it supposed to be an *inclusion*?

(QF)3. Under the law, is a "definition" the same thing as an "inclusion"? Can a provision said by a legislative body to be a "definition" be enforced as an "inclusion"?

Unrelated to statutory authority and personam jurisdiction:

Issue G. Petitioner has relied on expert analysis of parties rightfully claiming heightened expertise and acquaintance with federal and state tax law and fundamentals of income taxation. Petitioner sees the clear protections in the law, written by experts (Congress). Since experts share Petitioner's view of his rights and duties, it violates due process to hold him liable for taxes or culpable for having failed to file a return or pay any property to the IRS, in conflict with the Respondent's claim that the law has been violated. See **Issue G**, ¶¶ 4.60 - 4.73.

Questions under Issue (G):

(QG)1. Can IRS Publication 17 be said to say anything other than that the value of Petitioner's personal services shall be deemed to be a cost?

(QG)2. What did the Respondent mean when it said that Petitioner's cost is the value of "services you provide in the transaction"?

(QG)5. When the courts and the IRS refuse to analyze tax law or to disclose what its parameters are in their opinion, how is it that the Petitioner can be duly punished for having to rely on his own interpretation and that of purported professionals?

Issue H. Petitioner's due process rights reside in fairness, and a tangible and substantive contradiction to those claims articulated herein must be dispensed by the Respondent. In *Brown & Williamson*, *infra*, a tobacco company was not a "protester" or deemed "frivolous" when challenging a federal agency based on a certain void in statutory authority, which is all Petitioner has sought to do herewith. See **Issue H**, ¶¶ 4.74 - 4.89.

Questions under Issue (H):

(QH)1. Can the Respondent point to express legislative permission for the Secretary of the Treasury to operate outside of Washington, D.C., as required under 4 USC § 72? If not, by what authority does the Respondent speak to the Petitioner?

(QH)2. Can the Respondent point to a statute which identifies a U.S. Citizen, like the Petitioner, as the subject of any of the Tax Code's income taxes? If not, how does 26 USC pass the test under authorities cited herein, *supra*?

(QH)3. Does due process embrace or exclude Petitioner's access to the letter of the law?

(QH)4. How can legislation not be void for vagueness when it requires the input of the Respondent just to stay out of trouble and jail?

(QH)5. Can the Respondent enforce a law it can't openly explain without violating due process rights under the void for vagueness doctrine?

These issues comprise the cross referencing exercise below. Why Petitioner does not owe Social Security tax on self-employment earnings:

> It's a chapter 2 tax, it's an income tax (§ 1401(a), (b)), and Petitioner is not the citizen who owes it. If Petitioner pays SS on the value of personal services it would violate § 83(a) which only allows the excess over what Petitioner paid for the compensation to be included in gross income. Unless the pay is foreign earned, Petitioner has no form to claim it on without violating 26 CFR 602.101 which only allows Petitioner to file the Form 2555 Foreign Earned Income tax return. Petitioner can't be the citizen in this chapter (§ 1402(b)) and still be the citizen in chapter 1 (26 CFR 1.1-1(c)). If Petitioner fails to pay it, Petitioner can't be assessed because SS is not a stamp tax (§ 6201(a)).

Why Petitioner does not have to file a tax return:

Petitioner earned nothing reportable on the Form 2555 Foreign Earned Income tax return, Petitioner earned no "excess" to include in gross income under § 83(a), and if Petitioner fails to file tax returns or fail to pay any of these taxes Petitioner can't be charged because Petitioner is not the "person" defined in § 7343, in addition to the fact that Petitioner can't be assessed because Petitioner is not a stamp tax payer (§ 6201(a)). The Form 1040 is strictly for reporting amounts of gross income as proven by the fact that there is no place on the form for § 83(a) to operate. Indeed, the form starts in § 61(a) gross income on line #2, when § 83(a) allows only the excess (profit/income) to be so reported.

Or-

To assess the Petitioner for unpaid taxes, the IRS has to violate § 6201(a) which limits assessment authority to taxes paid by stamp, and it must violate 602.101 which allows Petitioner to file only the Form 2555 Foreign Earned Income tax return.

To tax the Petitioner through the Form W-4, the IRS and an employer have to violate § 3401(c) which defines "employee" as a public servant of sorts, and they have to violate §§ 83, 212, 1001, 1011, 1012 (the § 83 equation) which provide that the value of Petitioner's services is to be excluded from gross income and not taxed as profit. It must also violate 602.101 which requires the Petitioner only to report foreign earned income on the Form 2555 Foreign Earned Income tax return. This ends up to be a chapter 1 liability under § 1 (See § 31(a), credit for W-4 amounts). This chapter 1 tax was imposed by the Secretary of the Treasury under 26 CFR 1.1-1(a), (b), and (c), and not by Congress in 26 USC § 1. IRS must give Petitioner credit for this amount (all American employees) under § 31(a) but only federal public servants are eligible (26 CFR 1.31-2(b)), thus rendering said credit a false entry on forms in violation of 18 USC 1001 (a federal crime).

To make the Petitioner pay FICA, the IRS and an employer have to violate § 3121(e) which defines "citizen" as a citizen of the U.S. Possessions, and they have to violate §§ 83, 212, 1001, 1011, 1012 (the § 83 equation) which provide that the value of Petitioner's services is to be excluded from gross income and not taxed as profit. It must also violate 602.101 which requires Petitioner only to report foreign earned income on the Form 2555 Foreign Earned Income tax return.

To make the Petitioner pay Social Security on self employment earnings, the IRS must violate § 1402(b) which defines "citizen" as a citizen of the U.S. Possessions, and must violate §§ 83, 212, 1001, 1011, 1012 (the § 83 equation) which provide that the value of the Petitioner's services is to be excluded from gross income and not taxed as profit. It must also violate 602.101 which requires

Petitioner only to report foreign earned income on the Form 2555 Foreign Earned Income tax return.

To tax the Petitioner's compensation under chapter one of the Tax Code, the IRS has to violate §§ 83, 212, 1001, 1011, 1012 (the § 83 equation) which provide that the value of the Petitioner's services is to be excluded from gross income and not taxed as profit. It must also violate 602.101 which requires Petitioner to only report foreign earned income on the Form 2555 Foreign Earned Income tax return. This tax was imposed by the Secretary of the Treasury under 26 CFR 1.1-1(a), (b), and (c), and not by Congress in 26 USC § 1.

To make the Petitioner pay chapter one capital gains tax under § 1(h), it must violate 602.101 which requires Petitioner to only report foreign earned income on the Form 2555 Foreign Earned Income tax return. This tax was imposed by the Secretary of the Treasury under 26 CFR 1.1-1(a), (b), and (c), and not by Congress in 26 USC § 1.

Petitioner, as an employee or sole proprietor/self employed, cannot be charged with failure to file returns unless the IRS first:

1. Violates §§ 83, 212, 1001, 1011, 1012 (the § 83 equation) which provide that the value of Petitioner's services is to be excluded from gross income and not taxed as profit. By doing this, the IRS/U.S. can now say it has proven amount of "gross income" which triggers a requirement to file under § 6012(a). It also violates 602.101 which requires Petitioner only to report foreign earned income on the Form 2555 Foreign Earned Income tax return.

2. Violates § 7343 which defined the term "person" for the chapter on crimes (§§ 7201-7344) as one whose duties arise from having been an officer or employee of a corporation, or member or employee. This contrasts vividly with the **employee or self employed** whose duties arise, according to the IRS, from having been the recipient of gross income, gifts, gains, and/or profit.

3. For failure to file charges against the individual who received **capital gains only**, the IRS/U.S. violates § 7343 which defined the term "person" for the chapter on crimes (§§ 7201-7344) as one whose duties arise from having been an officer or employee of a corporation, or member or employee. The IRS also violates 602.101 which requires Petitioner only to report foreign earned income on the Form 2555 Foreign Earned Income tax return.

****End cross reference***. As briefed, this is precisely how these conclusions operate to form the parameters of the Respondent's statutory authority under 26 USC.

If the law did not operate as briefed the IRS and DOJ wouldn't need protective orders against inquiries into statutory limitations of authority. With a presumption of correctness gained by introduction of evidence contrary to standard operating, Complainants are free to believe the conduct so protected constitutes a violation of one or more of the statutes below.

18 U.S.C. Provisions:

18 U.S.C. § 3 Accessory after the fact. ***Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.***

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

18 U.S.C. § 4 Misprision of felony. ***Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same*** to some judge or other person in civil or military authority under the United States, ***shall be fined under this title or imprisoned not more than three years, or both.***

18 U.S.C. § 241 Conspiracy against rights. ***If two or more persons conspire to injure, oppress, threaten, or intimidate*** any person in any State, Territory, Commonwealth, Possession, or District ***in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States***, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 242 Deprivation of rights under color of law. ***Whoever, under color of any law, statute, ordinance***, regulation, or custom, ***willfully subjects any person in any State***, Territory, Commonwealth, Possession, or District ***to the***

deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, ***shall be fined under this title or imprisoned not more than one year, or both***; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or ***if such acts include kidnapping or an attempt to kidnap***, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, ***shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death***.

18 U.S.C. § 872 Extortion by officers or employees of the United States. Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 876 Mailing threatening communications.-

(d) Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 880 Receiving the proceeds of extortion. A person who receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than 1 year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 3 years, fined under this title, or both.

18 U.S.C. § 1341 Frauds and swindles. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell,

dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1343 Fraud by wire, radio, or television. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1951 Interference with commerce by threats or violence.-

(a) ***Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce***, by ***robbery or extortion or attempts or conspires so to do***, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section ***shall be fined under this title or imprisoned not more than twenty years, or both***.

(b) As used in this section -

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "***extortion***" ***means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right***.

18 U.S.C. § 1623 False declarations before grand jury or court.-

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if -

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

18 U.S.C. § 1962 Prohibited activities.

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 2235 Search warrant procured maliciously.- Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 3282 Offenses not capital.- Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information ***is instituted within five years next after such offense shall have been committed***.

26 U.S.C. Provisions:

Tax Code 26 U.S.C. § 7214 Offenses by officers and employees of the United States. -

(a) Unlawful acts of revenue officers or agents. ***Any officer or employee of the United States*** acting in connection with any revenue law of the United States -

(1) ***who is guilty of any extortion or willful oppression*** under color of law; or

(2) ***who knowingly demands other or greater sums than are authorized by law***, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) ***who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment***; or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) ***who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement***; or

(8) ***who, having knowledge or information*** of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, ***fails to report, in writing, such knowledge or information to the Secretary***; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

26 U.S.C. § 7403 Action to enforce lien or to subject property to payment of tax.

(a) Filing.- In <u>any</u> case ***where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof***, whether or not levy has been made, ***the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title*** with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

(b) Parties.- ***All persons having liens upon or claiming any interest in the property*** involved in such action ***shall be made parties*** thereto.

(c) Adjudication and decree.- ***The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property***, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

(d) Receivership.- In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

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Tab #4

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Tab #5

TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

David R. Myrland, Affiant/Complainant, vs. UNITED STATES DEPARTMENT OF JUSTICE, ALBERT GONZALES, UNITED STATES TREASURY DEPARTMENT, JOHN W. SNOW, INTERNAL REVENUE SERVICE, MARK W. EVERSON, U.S. DISTRICT COURT, GARR M. KING, LEE YEAKEL, ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, TERRY L. MARTIN, U.S. TAX COURT, JOEL BERGER, NORTHWEST AIRLINES (a corporation), and all those similarly situated or so involved, marital communities spared, DEFENDANTS.	No. _____ VERIFIED MEMORANDUM IN SUPPORT of 18 U.S.C. § 4 Misprision of felony complaint; 18 U.S.C. §§ 4, 241, 242, 876(d), 880, 1341, 1343, 1623, 1951(a), 1962(c), 1962(d), 2235; 26 U.S.C. § 7214.

1.1 COMES NOW, David R. Myrland, Complainant hereto, seeking to support claims of felonious misconduct complained of as required by 18 U.S.C. § 4 Misprision of felony. Parties hereto will hereinafter be referred to as Petitioner/Respondent (singular masculine). Knowing now that the Courts are issuing protective orders to keep the law out of every American's reach

Petitioner felt compelled to believe his interpretation of the law and to report the obvious felonies arising from the misenforcement proven thereby. This judicial shelter or safe harbor from Congressional assurances is nothing new.

1.2 The United States has admitted tacitly (See *Jim L. Walden v. United States, et al.*, #A-05-CA-444-LY, U.S. Dist. Court, Austin, TX, **Tab #8** Protective Order) that Title 26 USC's provisions do not provide for any contact between the Internal Revenue Service and the Petitioner. **First** - The 16th Amendment allows the Congress alone shall have the power to lay the taxes ultimately sought by the IRS, but the Respondent can produce only executive branch regulations to allege a liability. (See *Walden's* memorandum at ¶¶ 3.4 through (QA)5; Issue B herein ¶¶ 4.12.-4.19). **Second** - Congress has placed a burden upon the Respondent to prove that the office behind the summons of records (26 USC 7602) has permission to leave D.C. prior to acting outside of it. (See 4 USC 72; *Walden's* memorandum at ¶¶ 3.11 through (QB)4; Issue A herein ¶¶ 4.5 - 4.11). **Third** - Petitioner must violate the law (26 CFR 602.101) to file a form to report domestically earned profits (taxable income) on any Form 1040, because the law only permits him to file a tax return to report "foreign earned income." (See *Walden's* memorandum at ¶¶ 3.20 through (QC)3; Issue C herein ¶¶ 4.20 - 4.25).

1.3 In *Walden*, *id.*, the United States asked for a protective order against having to answer the questions for review found under Petitioner's Issues A, B, and C briefed herein, and that **protective order was issued by judge Lee Yeakel on 8/2/05**. The United States was likewise unable to speak of these laws, 4 USC § 72 and 26 CFR 602.101, in claims in *U.S. v. Herold*, *infra*, under his Issues A and E respectively in his (mailed on 6/23/99) motion to dismiss. On September 18, 1996 in *McCall*, *infra*, and in the instance of three other Supreme Court petitioners thereafter, the Supreme Court's denial of certiorari spared Respondent the discomfort of having to discuss the law. (See *McCall v. C.I.R.*, S.Ct. #96-5871; *Bryan v. C.I.R.*, S.Ct. #96-6997; *Santangelo v. C.I.R.*, S.Ct. #96-6935; *Talmage v. C.I.R.*, S.Ct. #97-5299).

1.4 In *U.S. v. Herold*, U.S. Dist. Court, Portland, Oregon, # CR 99-161-KI (prosecution for 26 USC 7203 failure to file return(s), 3 counts), the Court allowed Respondent to remain silent as to certain claims also briefed herein. For four months that Court allowed the Respondent to destroy Mr. Herold's affairs and contracting business to where he had to plead to one count of failure to file so he could get back to work to support his family. Judge Garr M. King was fully

aware of all of this, he was reminded of the Court's duties, and he was pleaded with to hold a hearing and to hold the IRS to the letter of the law, but he refused.

1.5 Indeed, to raise issues concerning applicable provisions in American courts is to violate the law against frivolity. The list below is an accounting of efforts made to obtain indulgence of briefed statutory challenges in common with those raised herein.

Tax Court docket number:
#11315-94 Chris Bernsdorff was penalized $1000.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#15685-94 Susan Eckles was penalized $3000.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#3176-95 Robert and Mauris Justice were penalized $3750.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#1610-95 Richard and Pamela Bryan were threatened with penalties for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#8766-95 William Santangelo was penalized for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others. (See Memorandum Opinion, filed Oct.2, 1995, pg.13, $2,500.00).

#339-95 Stephen Talmage was penalized $6500.00 for offering to concede all facts in exchange for "how to comply with § 83". (See Order and Decision, 3/11/96, pg.8, 19, 20).

Santangelo, **9th Cir**.App.#95-70866, and *Bryan*, **9th Cir**.App. #95-70800, $2000.00 each.

1.6 In actions under 5 USC § 702 (District Court, Seattle, Civil #s C95-1001R filed 6/30/95; C95-1246(C)R filed 8/11/95), the Court (Chief Judge Rothstein, two violations of 18 USC § 242) decided that Sovereign Immunity and 26 USC § 7421 supersede the Citizen's Right to know about the law, regardless of its applicability. U.S. Tax Court cannot say with any certainty whether it sits to decide issues at law, or if it sits to penalize those who dare raise said issues (See ¶ 5.6, *infra*), and yet it feels free to destroy those Citizens with a genuine desire to comply with the law. The Respondent's silence and oppression are judicially proven and exposed by these [decisions]. The Respondent's disregard for the right of the Petitioner to arrange his affairs according to law is represented by many cases through which one can see a wall between the laborer and the statutory provisions to which he [is subject], the provisions relied upon herein.

Being self taught and in court for his first time(s), Petitioner hardly claims to have done this work flawlessly, but for one who wanted only to prepare tax returns to go to this length just to find the truth surely exhausted the remedy purportedly available in the executive and judicial branches.

1.7 In case law (Supreme Court) found at ¶ 4.34, *infra*, it becomes clear that these litigants were precisely on point, that they were anything but frivolous in their claims under 26 USC § 83, and that those "courts" even contradicted the DOJ and S.Ct. to call taxpayers "frivolous" so as to fine them for being correct and for believing in Congress, for attempting to change the IRS with the law.

1.8 Petitioner is in real danger of being falsely arrested and imprisoned, falsely charged, libeled, slandered, and stands to lose everything, tangible and intangible, to his servants. This Complaint should quash allegations of *willfulness* for those who join it, and it's having been filed as required by law should ensure that any and all Grand Juries shall have access to this Complaint in any deliberations involving a controversy under 26 USC. Complainants hereto are not and will never be *willfully* in violation of anything.

Petitioner has relied upon nothing more than the following maxims/axioms:

1. ***Congress*** may lay and collect income taxes, as authorized by the 16th Amendment. Congress must name the subject of any income tax.

2. The law is perfect. All Americans have the right to access the law and to know of its proper application and operation, even tax law.

3. The law must be complied with – all of it, even by the IRS, even 26 CFR 1.83-3(g), 1.1001-1(a), and 602.101.

4. The law must be applied openly and with indifference.

5. Statutes and regulations are intrinsic evidence. To contradict a statutory claim one must either prove, 1) the statute is unconstitutional, 2) the interpretation of the statute is flawed, or 3) the existence of applicable exceptions to the statute under which the claim is made.

6. *Expressio unius est exclusio alterius*/Clear language/Void for vagueness. By denying access to tax law the individual is deprived of access to an entire branch of gov't (legislature) as it relates to an entire title of the United States Code (taxation without representation). In the silence evaporates one's rights to arrange personal affairs according to law (IRS publications are not law).

7. Statutory definitions are not "inclusions." A definition ceases to be a definition if the term "includes" is interpreted as a term which expands the definition to elements not mentioned. A definition excludes all non-essential elements by not listing them.

8. Tax Code (26 USC) § 83 applies to any and all compensation for services. "Section 83(a) explains how property received in exchange for services is taxed." (See 956 F.2d at 498 (CA5 1992)).

9. Fair market value (FMV) of property is determined by an arm's length transaction. FMV equals contract value.

10. Cost is excludible or deductible from gross income. Labor is property, all property is cost under the law; labor's value is cost, not profit.

11. Only Congress writes the law. Administrative regulations can't deviate from statute because regulations aren't written by Congress.

II. INTRODUCTION TO MEMORANDUM

2.1 With this Memorandum Petitioner seeks to illustrate his claim that statute, in this instance, is written in very clear language and is protective of his property. Congress will find that law operates in ways contrary to routine. While the Respondent *claims* otherwise, it possesses no lawful authority or statutory basis for its claim that 26 USC applies to the Petitioner, and it lacks the requisite leave under 4 USC § 72 which might allow the Respondent to speak to the Petitioner. This challenge is identical to that made in *Brown & Williamson v. F.D.A.*, the challenge that a federal agency such as the IRS has no statutory authority to act as complained of.

2.3 In addition, the Respondent has expressly instructed the Petitioner, in writing, that the amounts now deemed gross income are rightfully deemed to be a cost, an amount deductible from gross income under the law.

2.4 Because these claims are founded upon statute's place in American jurisprudence, anybody protesting Petitioner's reliance upon statute can readily be termed "anti-Congress" and "anti-government"; *due process protestors*. **Exhibits to this verified Memorandum are as follows**:

Exhibit 1. Protective Order issued by U.S. Dist. Court (Austin, TX) in *Walden, supra*. **(Tab #8)**.

Exhibit 2. 26 CFR 1.83-6 amendment described. See also - "**Proposed Regulations, ¶ 49,538, Proposed Amendments of Regulations (EE-81-88)**, Federal Register 12/5/94." (**Tab #9**).

Exhibit 3. Affidavit of Tim Garrison, accountant of thirty years, describing the arbitrary elements of dealing directly with the IRS on behalf of clients with tax controversies. (**Tab #10**).

Exhibit 4. IRS Publication 17 "Tax Guide for Individuals" excerpts showing reflection of statutes claimed by Petitioner to have been violated. Here, the IRS clearly states that all property is a cost, and that Petitioner's cost is the value of personal services. (**Tab #11**).

Exhibit 5. Three annually consecutive copies of 26 CFR 602.101 as amended showing its evolvement over such period regarding return filing requirements found there. Included is Treasury Decision ("T.D.") 8335 which caused the *amendment* to this regulation. (**Tab #12**).

III. STATUTORY INTERPRETATION & AUTHORITIES.

3.1 Prior to statutory interpretation and analysis the Petitioner would like to review the maxims, axioms, and thresholds of due process by which this research was guided and which duly confine the conclusions set forth herein. This memorandum is an explanation of precisely how the Tax Code operates in many aspects. Cogent refutation places the speaker of such ahead of all DOJ and IRS attorneys, and worlds beyond every federal judge, who all have been unable for years to so speak, as it relates to the competent application of tax law to fact.

A. Statutory language is of primary import.

3.2 In state courts, "Whether the legislature acted wisely by creating the challenged restriction is not a proper subject for judicial determination. *McKinney v. Estate of McDonald*, 71 Wash.2d 262, 264, 427 P.2d 974 (1967); *Port of Tacoma v. Parosa*, 52 Wash.2d 181, 192, 324 P.2d 438 (1958). The fact that the legislature made no exception for minors does not give rise to some latent judicial power to do so by means of a volunteered additional proviso. This is true even if it could be said the legislative omission was inadvertent. *State v. Roth*, 78 Wash.2d 711, 715, 479 P.2d 55 (1971); *Boeing v. King County*, 75 Wash.2d 160, 166, 449 P.2d 404 (1969); *State ex rel. Hagan v. Chinook Hotel*, 65 Wash.2d 573, 578, 399 P.2d 8 (1965); *Vannoy v. Pacific Power and Light Company*, 59 Wash.2d 623, 629, 369 P.2d 848 (1962). If there is a need for such an

exception, it must be initiated by the legislature, not by the courts. *Boeing v. King County, supra; State ex rel. Hagan v. Chinook Hotel, supra.*" [1] And in federal courts -

> "The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the Federalist, No.78, from which we excerpt the following:
>
> > "The executive not only dispenses the honors, but holds the sword of the community. The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, ***has no influence*** over either the sword or the purse; ***no direction*** either of the strength or of the wealth of the society; and ***can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment.***" [2]

3.3 "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 Co.*, 232 U.S. 399, 409; *United States v. Bank*, 234 U.S. 245, 258." [3] On state and federal levels, strict construction and hewing to the law with indifference is a mandate and axiom.

3.4 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. [4] What does not exist in regulation or statute does not exist at all. [5]

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[1] See *Cook v. State*, 83 Wash.2d 725, 735, 521 P.2d 725 (1974).
[2] See *Evans v. Gore*, 253 U.S. 245, 249, 40 S.Ct. 550, 551 (1920).
[3] See *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916).
[4] 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).
[5] 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.*,

3.5 All can see from this supported dialog that legislation and its intent, on state and federal levels, is the governing factor in determining unlawfulness or legality, and that no agency or court has the authority to deviate from it or expand its application to subjects not expressly implicated or addressed. It is *Brown*, and *Chevron*, *infra*, which provide the prescription for deciding Petitioner's challenges, all of which are founded squarely upon strict interpretation of statutory language. These show a lack of statutory authority at the foundation of certain modes of enforcement by the Respondent. The analysis of statute in *Brown*, appellate decision (CA4 1998), serves as an exquisite example of how Petitioner hopes any Court will approach these issues, as due process requires.

B. Statutory interpretation must be strict.

3.6 What this case will evoke from the Respondent is either silence regarding the challenge and libel in the form of name-calling on the record, *i.e.*, "tax protester," "lowly taxpayer," or the Respondent will challenge Petitioner's interpretation of statute with a logical contradiction. In such an instance as the latter, a particular approach to the controversy must be taken.

> "***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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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].

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.***" [6]

"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." [7]

"We are not convinced that the language is as clear as the Commissioner contends." [8]

"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)." [9]

3.7 This explanation of how to interpret statute only confirms the assertion that statute must clearly impose the duties and requirements over which the Respondent may seek to adversely act against the Petitioner.

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

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

3.8 Petitioner is basing his claims on statute alone, confining his conclusions to those supported by the application of well settled and accepted canons of statutory construction. Congress' failure to identify the Petitioner in statutory definitions is therefore interpreted as legislative intent that he 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); *Evans v. Newton*, 382 U.S. 296, 311 (1966); *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373, 375 (1958)).

3.9 Petitioner is challenging the statutory authority of the Respondent, 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)"
>
> "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.
>
> "**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." [10]

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

3.11 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.

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

"***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 year." 42 U.S.C. Section(s) 2000e(b). . . . ***Statutes must be interpreted, if possible, to give each word some operative effect.***" [11]

". . . 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***[.]" [12]

"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." [13]

"***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." [14]

"***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." [15]

"***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,

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

see S.Rep. at 6, ***we can only conclude that the omission was intentional; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create.***" [16]

"***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.***" [17]

"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[.]" [18]

"***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." [19]

"***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 unconvinced by anything in the legislative history that this definition should be given less than its full effect." [20]

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[16] See *Honig v. Doe*, 484 U.S. 305, 324 (1988).
[17] See *Meese v. Keene*, 481 U.S. 465, 484 (1987).
[18] See *INS v. Hector*, 479 U.S. 85, 88 (per curiam opinion) (1986).
[19] See *FRS v. Dimensional Financial Corp.*, 474 U.S. 361, 365 (1986).
[20] See *U.S. v. Turkette*, 452 U.S. 576, 593 (1981).

> "***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***[.]" [21]

> "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." [22]

> "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)." [23]

> "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.***" [24]

> "***Homes that do not meet the definition may not be licensed***, and, under state law, only licensed facilities are entitled to Foster Care payments." [25]

3.12 FURTHER, while the maxim of *expressio unius est exclusio alterius* is broader in its scope than to address only statutory definitions, this clear and consistent pattern shows them to be wholly deserving of its governance. This repeated and recent restatement of this principle, the strict interpretation and application of statutory definitions, shows the challenges made herein to be made in good faith and to be correct.

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

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[21] See *Goldberg v. US*, 425 U.S. 94, 112 (1976).
[22] See *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 719 (1967).
[23] See *INS v. Stevic*, 467 U.S. 407, lead opinion at fn.18 (1984).
[24] See *City of Rome v. US*, 446 U.S. 156, 167 (1980).
[25] See *Miller v. Youakim*, 440 U.S. 125, 131 (1979).

D. Void for vagueness and taxation by clear language.

3.14 There are certain constraints on the parameters of enforcement authority, certain things that cannot be accomplished if a statute is written in a way so as to prevent the individual of average intelligence from understanding its terms. 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)" [26]

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[26] 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 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*

"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)." [27]

"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."

"***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.*

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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*.

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

> *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." [28]

3.15 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)).

3.16 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.***

3.17 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

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

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)." [29]

"***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." [30]

"***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)." [31]

3.18 Statute must clearly implicate the Petitioner as an offender or taxable subject or Petitioner must be deemed to be without the scope of the subject legislation, in this instance 26 USC. The questions for review, *infra*, are clear enough, the basis for them simple enough, and the Respondent therefore cannot justify silence upon the Petitioner's queries. In such an instance, Petitioner has due process and privacy rights permitting him to be left alone by the Respondent.

IV. PETITIONER'S STATUTORY CHALLENGES.

4.1 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 Petitioner who is a Citizen of the United States, an American, a resident 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 Petitioner for the purposes of 26 USC.

4.2 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 duty "to say

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[29] See *United States v. Batchelder*, 442 U.S. 114, 123 (1979).
[30] See *Williams v. United States*, 341 U.S. 97, 100 (1951).
[31] 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).

what the law is." *Marbury v. Madison*, 1 Cranch. 137, 177 (1803) (Marshal, C.J.)." [32] Thus, our initial inquiry is whether Congress intended to subject the Petitioner 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")).

4.3 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.

4.4 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)).

A. Respondent wants for requisite statutory authority to act against Petitioner.

4.5 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:

> § 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***

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

> ***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 21, 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.

And in Social Security administration legislation Congress named a beneficiary:

> 42 USC § 411(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).

And in Tax Code chapter 24, Congress has named a subject of Form W-4 requirements:

> § 3401(c) Employee.- For the purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

4.6 And these are the only other chapters of the Tax Code, other than chapter one, which the Respondent 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 performed by the Petitioner. None of these subjects, expressly named by Congress, happen to be the Petitioner.

4.7 In those chapters referenced above, all subjects of these taxes were found in statutes called "definitions," but in chapter 1 of 26 USC we find no section called "definitions" which even remotely mentions a subject or "citizen" as we found so clearly identified in these other chapters.

These definitions are merely a simple expression or exercise of the power conferred upon Congress by U.S. Constitution, Amdt. 16, to wit:

> 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."
>
> "***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." [33]

4.8 Again, while Congress has clearly identified a subject in chapters of the Tax Code which impose taxes which clearly do not pertain to the Petitioner but rather apply to people with other citizenships and occupations and their "income," Congress has at the same time never identified a subject citizen in chapter one, the Petitioner's citizenship finding its sole mention in regulation alone, in 26 CFR 1.1-1(a), (b), (c) (fn.[34]); this **regulation** is not the work or intent of Congress. Congress has never named the Petitioner, a Citizen of the United States, as subject to any tax imposed under the provisions of 26 USC.

Under Issue (A):

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

4.10 Petitioner has a right to know how the law operates to impose the Respondent's tax, the Respondent has the burden of proof under the weight of Petitioner's evidence, and Petitioner prevails when plain discussion about the provisions relied upon cannot be obtained. Nothing in 26

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

[34] See 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. . .

USC even remotely implicates the Petitioner (private sector employee, self employed, capital gains) as the subject of any tax imposed thereunder.

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

Questions under Issue (A):

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

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

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

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

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

B. Respondent wants for requisite statutory leave to operate.

4.12 Looking again only to the intent, *a fortiori*, the mandate, of Congress to first establish the limitations of agency authority, as one must, we find a very broad and general provision doubtlessly rooted in the Founding Fathers' creation of a federal government with limited powers. Congress has chosen to restrict the activities of certain offices (all of them) attached to the seat of government.

> 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.)

4.13 It is the Secretary of the Treasury who controls the IRS and who writes all needful rules and regulations for the enforcement of 26 USC (See 26 USC §§ 7801, 7805), so it is that Office, or perhaps the Office of the Commissioner of Internal Revenue, which must acquire the leave required by 4 USC § 72. Respondent will claim in error that 26 USC § 7621 is the grant of leave required under 4 USC § 72, claiming that the office of the President of the United States is somehow the same office occupied by the Commissioner of Internal Revenue and/or the Secretary of the Treasury.

> 26 USC § 7621 Internal Revenue Districts.
> (a) Establishment and alteration.-***The President*** shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.
> (b) Boundaries.-For the purpose mentioned in subsection (a), ***the President*** may subdivide any State or the District of Columbia, or may unite into one district two or more States.

4.14 The fault of such a claim is further exposed by the ***definitions*** of the terms "State" and "United States" that apply to the entire Tax Code.

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

4.15 A "definition" is a limitation upon the term defined (See any dictionary). Petitioner charges that Congress has limited the Office of the Secretary of the Treasury to operation in Washington D.C. and U.S. possessions, having never granted express statutory leave to operate elsewhere.

4.16 Petitioner has challenged Respondent's (Sec. of Treas.) **statutory authority** to operate outside of Washington, D.C.. Proof of jurisdiction is the Respondent's burden.. [35]

Under Issue (B):

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

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

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

Questions under Issue (B):

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

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

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

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

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[35] See *KVOS v. Associated Press*, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936): "...[w]here the allegations...are challenged by the defendant in an appropriate manner, ***the plaintiff must support them by competent proof.***" Also, from *F & S Contr. Co. v. Jensen*, 337 F.2d 160, 161-162, (10th Cir.1963): "***[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it.*** *City of Lauden, Okla. v. Chapman*, 257 F.2d 601 (10th Cir.); *McNutt v. General Motors Acceptance Corp.*, 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. Further more, statutes conferring jurisdiction on federal courts are to be strictly construed ***and doubts resolved against federal court's jurisdiction***. *Aetna Ins. Co. v. Chicago R.I. & P.R.R.*, 229 F.2d 584 (10th Cir.); *Hely v. Ratta*, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

C. Petitioner must violate regulation to satisfy the IRS in its demands for a Form 1040, other.

4.20 Regulations promulgated by the Office of Management and Budget (OMB), which prescribe the control number to be displayed on particular tax forms, require the filing of forms other than those which will be accepted by the Respondent. The Respondent will accept only forms that violate pertinent regulations.

4.21 Regulation 26 CFR 602.101 prescribes the form bearing the OMB control #1545-0067. This form is the Foreign Earned Income Form, Form 2555. (fn. [36]) Petitioner understands that no Form 1040, be it the 1040EZ, the 1040A, or the Form 1040, bears the OMB control number #1545-0067. It is clear that, for the Petitioner to file any form other than the form #1545-0067, Petitioner must violate 26 CFR 602.101. Since regulations govern, surely they must be complied with.

4.22 Unless Petitioner has earned *foreign earned income* he can see no reason to file the required form; Form 2555 Foreign Earned Income.

4.23 FURTHER, Respondent agrees that the Form 1040 is not the proper form for the Petitioner to file.

Under Issue (C):

4.24 Petitioner has no requirement to file any form or tax return other than the Form 2555 Foreign Earned Income return. To file any form other than the Form 2555, Petitioner must violate 26 CFR 602.101, a regulation that must be complied with. Because only the Form 2555 is prescribed to the Petitioner, the Petitioner has no filing requirements due to the fact that all compensation received during any years in controversy is rightfully deemed to **not** be "foreign earned."

4.25 Petitioner has no gross income to report on the only form that the law permits one with Petitioner's status to file. The Respondent has acted in total disregard for the provisions of 26 CFR 602.101. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary Petitioner will continue to act upon it.

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[36] See **Exhibit 5, Tab #12,** the Form 2555 and Forms 1040, 1040A, and 1040EZ, as well as 26 CFR 602.101 and Treasury Decision 8335, see 26 CFR 602.101 at 1.1-1.

Questions under Issue (C):

(QC)1. What is the OMB number of the form prescribed under 26 CFR 602.101 as that form required of the Petitioner?

(QC)2. Can the Petitioner ignore the provisions of 26 CFR 602.101 and rather file the form that the Respondent will accept?

(QC)3. If the Petitioner can ignore 26 CFR 602.101, what are all of the other regulations, statutes, or other provisions that the Petitioner can simply ignore?

D. Petitioner violates 26 USC §§ 83, 212, 1001, 1011, and 1012 when reporting compensation for services as gross income.

4.26 For the past several taxable years the Petitioner received compensation for services actually rendered. "Section 83(a) explains how property received in exchange for services is taxed." [37] Section 83 applies to all compensation paid for services of corporations, and for the services of individuals. [38] Labor is property. [39] The fair market value ("FMV") of property is established through the terms of an "arm's length transaction." [40]

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

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

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[37] See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).
[38] See 26 CFR 1.83-3(e), (f); *MacNaughton v. C.I.R.*, 888 F.2d 418 (CA6 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (CA5 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); *Robinson v. C.I.R.*, 82 USTC 444 (1984); *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).
[39] See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's*, 6th, "property."
[40] See 27 CFR 70.150(b); *U.S. v. Cartwright*, 411 U.S. 546, 552 (1973); *Hicks v. U.S.*, 335 F.Supp. 474, 481 (Colo.1971); *Pledger v. C.I.R.*, *supra*; *Black's*, 6th, "Arm's length transaction."

4.28 This requires that the "amount paid" for the compensation be established, the "excess" identified, and that such excess be included in gross income. To figure that "amount paid" or **cost** of the compensation, regulation requires that § 1012 and the regulations thereunder be applied.

> 26 CFR 1.83-4(b)(2) If property to which 1.83-1 applies is transferred at an arm's length, ***the basis of the property*** in the hands of the transferee ***shall be determined under section 1012 and the regulations thereunder.***

4.29 Labor being property, and the cost of the compensation, § 1012 will either include it or exclude it as a cost. Under § 1012 and its implementing regulations, intangible personal property (labor) is not excluded, anywhere.

> 26 CFR 1.1012-1(a) " . . . The cost is the amount paid for such property in ***cash or other property***."

4.30 If Congress intended that labor be excluded from that which is cost, or that property to be treated as a cost must be property within which one has a basis, § 1012 would have to reflect it; it does not, and so labor's value is cost. As such a cost, its fair market value (FMV) is deductible from gross income under § 212 (individual may deduct costs).

4.31 The FMV of the Labor (contract value) is the value of the cost and it is also known as "adjusted basis." Regulation requires that this amount be "withdrawn" from the amount realized in the transaction and that it be "restored to the taxpayer."

> 26 CFR 1.1011-1 Adjusted basis.-The adjusted basis... is the cost or other basis prescribed in ***section 1012***...

> 26 CFR 1.1001-1(a) ...from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by ***section 1011*** and the regulations thereunder... The amount that remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain.

4.32 After determining the FMV of the property that is a cost under the law (See 26 CFR 1.1012-1(a), labor not excluded), and to comply with § 83(a) and 26 CFR 1.1001-1(a), the FMV of cost(s), the "amount paid," the "adjusted basis," must be subtracted from the amount realized (the compensation), including only the excess (if any) in gross income.

4.33 Regulations under § 83 require that § 1012 be applied to figure the cost of Petitioner's compensation. To figure one's cost ("amount paid"), one can also proceed to 26 CFR 1.83-3(g) which says that the term "amount paid" in § 83 refers to the value (the FMV/contract value) of any property paid (labor) for the compensation.

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

4.34 The statute which embraces intangible personal property as a cost (§ 1012) is prescribed as the measure of one's cost when having only sold one's labor, and 1.83-3(g) does same. To impose the amounts now sought from the Petitioner the Respondent must violate, and deprive the Petitioner of, the provisions of § 83(a), 212, 1001, 1011, and 1012. The law does not provide that property within which one has no basis be excluded from cost; cost equals the FMV of any and all property disposed to obtain other property, unless expressly excluded under § 1012. [41] As used in statute and regulation, the terms "any" or "any property" are to be construed as all inclusive until express statutory exceptions can be cited to support a contention that such terms are not all inclusive. (See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (**1989**); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (**1994**); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (**1997**); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (**2002**) citing *Gonzalez* and *Monsanto*).

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

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[41] See also Internal Revenue Code of 1939 §§ 111, 112, 113.

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

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

And from *Monsanto, Id.*:

> "Section 853's ***language is plain and unambiguous***. ***Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory than § 853(a)'s language that upon conviction a person "shall forfeit . . . ***any property***" and that the sentencing court "shall order" a forfeiture. ***Likewise, the statute provides a broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included.*** Every Court of Appeals that has finally passed on this argument has agreed with this view. ***Neither the Act's legislative history nor legislators' post-enactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees, or because Congress simply did not consider the prospect that forfeiture*** [491 U.S. 601] ***would reach such property***. . . . Moreover, ***respondent's admonition that courts should construe statutes to avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language***. Pp. 606-611." [42]
>
> "In determining the scope of a statute, we look first to its language." *United States v. Turkette*, 452 U.S. 576, 580 (1981). ***In the case before us, the language of § 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees -- or anything else, for that matter***.
>
> As observed above, § 853(a) provides that a person convicted of the offenses charged in respondent's indictment "***shall forfeit . . . any property***" that was derived from the commission of these offenses. After setting out this rule, § 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of ***all property*** described in § 853(a). ***Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. ***Likewise, the statute provides a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities."*** 21 U.S.C. § 853(b) (1982 ed., Supp.V). ***Nothing in this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning***.

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

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

Respondent urges us, nonetheless, ***to interpret the statute to exclude such property for several reasons.*** Principally, ***respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees*** . . . In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. But this proves nothing[.] ***The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "'does not demonstrate ambiguity'" in the statute: "'It demonstrates breadth.'"*** *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985) (quoting *Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (CA7 1984)). ***The statutory provision at issue here is broad and unambiguous,*** and Congress' failure to supplement § 853(a)'s ***comprehensive phrase — "any property" — with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language."*** [43]

"As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, *United States v. Price*, 361 U.S. 304, 313 (1960); instead, Congress' intent is "***best determined by [looking to] the statutory language that it chooses***," *Sedima, S.P.R.L., supra*, at 495, n.13. . . . ***Finally, respondent urges us, see Brief for Respondent 2029, to invoke a variety of general canons of statutory construction***, as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, *e.g.*, *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *NLRB. v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). ***We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature."*** *United States v. Albertini*, 472 U.S. 675, 680 (1985). ***Here, the language is clear and the statute comprehensive; § 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions."*** [44]

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[43] See *Monsanto, Id.*, at 607-09.
[44] See *Monsanto, Id.*, at 610-11.

4.35 Since the 1989 *Monsanto* decision regarding "any property," three very recent decisions ('94, '97 and '02, *supra*) deal directly with the same question as to how to interpret the term "any," the question as to whether it is all inclusive or subject to arbitrary derogation. The inclusion here of lengthy excerpts is intended to offer appreciable input upon the topic and is not intended to delay or hinder process.

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

> "That this is so seems ***evident from the plain language of the statute***. It provides that -
>
> > each public housing authority shall utilize leases which . . . provide that . . . ***any*** drug-related criminal activity on or off such premises, engaged in by a public housing tenant, ***any*** member of the tenant's household, or ***any*** guest or other person under the tenant's control, shall be cause for termination of tenancy.
>
> 42 U.S.C. § 1437d(l)(6) (1994 Ed., Supp.V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. ***Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement.*** See *United States v. Monsanto*, 491 U.S. 600, 609 (1989). ***As we have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"*** *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Thus, ***any*** drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew or should have known about." [45]

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

> "Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:
>
> > Whoever, during and in relation to any . . . drug trafficking crime . . . for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years. . . . Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this

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

> subsection run concurrently with *any other term of imprisonment* including that imposed for the . . . drug trafficking crime in which the firearm was used or carried.

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

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

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

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

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

> S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year prison term for his firearms conviction before any other sentences. ***This added requirement, however, is "in no way anchored in the text of the statute."*** *Shannon v. United States*, 512 U.S. 573, 583 (1994). [46]

From *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994):

> "Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection. ***In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "any" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers.***
>
> ***We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute."*** [47]

End excerpts.

4.38 In reviewing U.S. Tax Court's disposition of the 26 USC § 83 claim we recall that its restrictive application of the term "any" allowing *some* property (labor, property with no tangible basis or cost) to be excluded under 26 CFR's 1.83-3(g)'s reference to "any money or property" was its only exculpatory reasoning or thread of logic to overcome the claim. In the cases above, decided in 1989, 1994, 1997, and 2002, Tax Court's reasoning regarding "any property" is clearly dismembered as arbitrary and therefore impermissible.

4.39 A very noteworthy point is that we see in each of those cases the U.S. as party movant to the argument that "any" is all inclusive, the party seeking to benefit under that interpretation. When the United States is on the offense the term "any" means everything, but when the lowly citizen demands the same reading it must be refused so the U.S. can take his paycheck. This alone distinguishes those controversies from this one. Naturally, lawfully, fairly, as taxpayers, every American has the right to expect from any court treatment in kind, lest they be the victim of an exaction. (See 26 CFR 601.106(f)(1), exaction violates due process). Regulation 26 CFR 1.83-3(g)

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[46] See *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997).
[47] See *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994).

must be read to include the value of personal services in its prescription that "the value of any money or property paid" be deemed to be an "amount paid" for the purposes of 26 USC 83(a).

4.40 The Respondent wants it both ways, but the Supreme Court has already ruled in favor of only one; "any property" means EVERYTHING. Respondent must offend *Monsanto* and its victory there to argue for the exclusion of the FMV of personal services from the language of 26 USC §§ 83 ("the value of any money or property paid" in 1.83-3(g)) and § 1012 ("cash or other property"), and this alone, as proven through years of litigation of this very claim, is the sole source of the Respondent's ability to tax as gross income the value of personal services actually rendered; Respondent is demanding that it not only *have* the cake, but that it also be allowed to gorge itself upon it at any time of its choosing.

4.41 The Respondent says in publication precisely what has been argued here, and then destroys the lives of anyone who acts upon such advice. [48] (See **Ex.4, Tab #11**). IRS Publication 17 is sent to [every] household in America, around Dec.-Jan., and is called "Tax Guide for Individuals," and covers nearly every aspect of personal income taxes; it's the most heavily distributed of all IRS publications. Since § 83 applies to all compensation, FICA wages/tips in § 3121(a) and (q), and § 3401(a) wages, and § 1402(a) self employed Social Security, are likewise classified under the law as § 83 compensation; everything the respondent collects under 26 USC ch.1, 2, 21, and 24 is theft through the violation/deprivation of the protections of §§ 83, 212, 1001, 1011, and 1012, to say nothing of 26 USC 7214 (crime to demand more money than is allowed by law) and 26 CFR 601.106(f)(1) (exaction is a taking of property, violates due process). Read this paragraph several more times after viewing IRS Pub.17 excerpts in **Ex.4, Tab #11**; *Monsanto* (others) is even honored in IRS publication.

4.42 The posture of the Respondent and the contrast to *Monsanto* to which it amounts is quite easily portrayed. Petitioner is siding, and will act in accordance with, *Monsanto*:

- THIS -	**vs.**	**- THIS -**
U.S. Tax Court/Secretary of Treasury and Commissioner of IRS say that "Any property" excludes *some* property *i.e.*, labor, resulting in an income tax on the FMV of labor.		U.S. Supreme Court and U.S. Department of Justice in *Gonzales, Rucker*, ***Monsanto***, *Alvarez*, regarding "any" and "any property." **(IRS Pub.17, 26 CFR 1.83-3(g), 1.1012-1(a))** "Any property" includes all property, like labor; no income tax on FMV of labor.

[48] See **Exhibit 4, Tab #11** - IRS Publication 17 "Tax Guide for Individuals" (excerpts), *ala*, all property is cost, cost is the value of personal services actually rendered.

4.43 In case law under § 83, the term "amount paid" is universally equated with the term and concept of "cost." The cost of Petitioner's compensation is figured by applying the provisions of § 1012 and the regulations thereunder. (See 26 CFR 1.83-4(b)(2)).

4.44 The term "amount paid" is defined as the value of **any property** paid by the Petitioner for his compensation for services. (See 26 CFR 1.83-3(g)). Regulation 26 CFR 1.1012-1(a) defines Petitioner's cost as "cash or other property" and fails to exclude from cost that *property within which Petitioner has no basis*. When regulation is read in light of *Monsanto*, as Petitioner demands and subscribes, the value of Petitioner's personal services is a cost, expressly excluded from gross income as an "amount paid" by the terms of § 83(a).

> "The regulations...now govern, and will continue to govern, the abbreviated application process. See *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990). ***No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them.***" [49]

4.45 The Supreme Court has ruled that a tax on the FMV of labor constitutes a diminution of compensation, that is constitutes the taking of part of a contract for the sale of labor. [50] It is said that the 16th Amendment did not extend Congress' taxing power to objects or subjects previously immune, [51] and the right of contract is held in high regard:

> "Included in the right or personal liberty and the right of private property, partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property." [52]

4.46 In instructional publications, the IRS reminds the individual who sells personal services that the cost of their paycheck is the "value of services provided in the transaction," that ALL property is a cost.

Under Issue (D):

4.47 Under law, to tax the FMV of services actually rendered, the Petitioner must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-

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[49] See *Schering Corp. v. Shalala*, 995 F.2d 1103 (D.C.Cir.1993).
[50] See *Evans v. Gore*, 253 U.S. 245, 40 S.Ct. 550 (1920).
[51] See *Peck v. Lowe*, 247 U.S. 165; *Stanton v. Baltic Mining Co.*, 240 U.S. 103.
[52] See *Coppage v. Kansas*, 236 U.S. 1, 14 (1915).

3(g)) embraces the FMV of labor as a cost ("***value of any money or property paid***"), despite the fact that it is property within which the Petitioner has no basis. Property within which one has no basis is not excluded from cost under the law.

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

Questions under Issue (D):

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

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

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

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

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

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

E. By plain language Congress has limited IRS' assessment authority.

4.49 Statutory grant of assessment authority limits said authority of the IRS to taxes "which have not been duly paid by stamp."

> § 6201 Assessment Authority.
> (a) Authority of Secretary.-*The Secretary is authorized and required to make the inquiries, determinations, and assessments of* all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, ***which have not been duly paid by stamp*** at the time and in the manner prescribed by law. *Such authority* shall extend to and include the following:
> (1) Taxes shown on returns.-The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title. (Emphasis added)

> 1939 IRC § 3640 Assessment authority. *The Commissioner is authorized and required to make the inquiries, determinations, and assessments of* all taxes and penalties imposed by this title, or accruing under any former internal revenue law, ***where such taxes have not been duly paid by stamp*** at the time and in the manner provided by law."

4.50 In § 6201(a) above, underlining, italics, and bold emphasis is employed. *In italics is the person who can assess taxes.* Underlined is the title containing the taxes that can be assessed, **and in bold is the qualifier which designates what sort of taxes in "this title" can be assessed under such authority**. Only that authority, "such authority," that limited authority, is extended to subparagraph (1). Predecessor section 3640 of the 1939 Code does not have such a subparagraph (1) to lend the IRS the semantic leeway for the expansion of § 6201's application to "returns or lists."

> 26 CFR 301.6201-1 Assessment authority.-(a) In general. The District Director is authorized and required to make all inquiries necessary to the determination and assessment of ***all taxes imposed by the Internal Revenue Code of 1954*** or any prior internal revenue law.

4.51 The obvious limitation present in statute is destroyed by this regulation under § 6201. The phrase "which have not been" is simply read in error by the courts as "which are not." Petitioner is not engaged in a taxable activity that requires payment of liabilities by stamp. The authority to make an assessment of liability against the Petitioner is derived solely through

regulatory deviation from the statute. This is a flagrant abuse of authority by the IRS or Secretary and serves to destroy the restrictions built into § 6201.

4.52 This regulatory omission of the term "stamp" is key, the source of IRS' assessment authority is a mere regulation, just as in *Brown* where such a contrivance was held to be an invalid basis for tobacco regulation due to a lack of statutory authority upon which to rest it. 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. [53] What does not exist in statute does not exist at all. [54] For this reason, 26 CFR 301.6201-1(a) and any assessment not of taxes "duly paid by stamp" must be declared null and void as beyond the statutory authority of the IRS to so promulgate or initiate. "Our tax system is based upon voluntary assessment and payment, not upon distraint." [55] Under statute, this is indeed true.

Under issue (E):

4.53 Statute restricts Respondent's assessment authority to taxes duly paid by stamp, but which remain unpaid. Even § 6201(a)'s predecessor 1939 IRC 3640 restricts Respondent's assessment authority in the same way.

4.54 Regulation 26 CFR 301.6201-1(a) deviates from statutory restrictions when it extends assessment authority to *all* taxes imposed by the Internal Revenue Code of 1954/1986. Had the Respondent, or the Secretary of the Treasury, not written regulations deviating from statutory restrictions found in § 6201(a), it could not assess any taxes other than those duly paid by stamp. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary Petitioner will continue to act upon it.

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[53] See *Brown & Williamson v. FDA, supra*; *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).

[54] See *Brown & Williamson, supra*; *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. See also *Security Bank of Minnesota v. C.I.R., supra*, (CA8 1993).

[55] See *Flora v. U.S.*, 362 U.S. 176 (1959).

Questions under Issue (E):

(QE)1. Does the language of 1939 IRC § 3640 or 26 USC 6201(a) permit the Respondent to assess taxes other than those which have not been duly paid by stamp, taxes like those imposed by chapters 1, 2, 21, and 24? (See 26 USC 4371 and 4411, stamp taxes).

(QE)2. Does 26 CFR 301.6201(a)-1 deviate from 26 USC 6201(a), unreasonably broadening limitations placed upon Respondent's assessment authority as intended by Congress?

F. Criminal statutes in 26 USC have limited scope.

4.55 Petitioner's alleged duties arise from the receipt of gross income, and not from having at any time been an officer or employee of a corporation, or a member or employee of a partnership. This fact excludes Petitioner from the definition of the term "person" as defined in 26 USC chapter 75 Crimes, the chapter in which the charging statute is located.

> 26 USC § 7343 Definition of Term "Person". The term "person," as used in this chapter, includes an officer or employee of a corporation, or a member or employee of a partnership who ***as such officer, employee, or member is under a duty to perform the act*** in respect of which the violation occurred.
>
> "**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)" "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."
>
> "**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." From *Black's*, 6th edition.

4.56 Knowing that a "definition" is a term of limitation, it is a foregone conclusion that the term "includes" does not change the "definition" into an "inclusion." The provision above provides that the person who may be indicted is one whose duties arise from employment or association, not from receipt of gross income, as would Petitioner's alleged duties. (See authorities cited, *supra*, regarding interpretation of statutory definitions, "It is axiomatic that the ***statutory***

definition of the term excludes unstated meanings of that term." [56]). If Congress intended that any person be subject to ch. 75, it would have used express language to that effect.

> 26 U.S.C. § 7701(a)(14) Taxpayer.- The term "taxpayer" means ***any person*** subject to any internal revenue tax.

4.57 Petitioner is not a "person" who can indeed commit the crimes described under 26 USC § 7201 through 7344. Since no charges may be brought against the Petitioner under 26 USC § 7203, filing, payment, and reporting is indeed voluntary, as it relates to criminal charges under 26 USC, ch.75. This claims extends to monetary penalties for frivolity under §§ 6702 and 6673 as well, for subchapter 68B contains an identical definition of the term "person" at 26 U.S.C. § 6671(b). With all of the case law saying that statutory definitions are all inclusive, there's no way by which the average individual would learn that "includes" is deemed to turn what Congress calls a *definition* into an "inclusion" which lists only part or some of its scope and elements.

Under Issue (F):

4.58 As the term is used in 26 USC § 7343, "includes" does not change to an *inclusion* that which Congress clearly intended as a *definition*. If Congress intended this definition be applicable to any person it surely would have said so, *e.g.*, "any person" or "every person." [57] If § 7343 is said to apply to elements not mentioned, it can no longer be a "definition" as Congress called it, for a "definition" would have to exclude all non-essential elements. If Petitioner is mistaken, then so are law dictionaries which say that "definitions" exclude all non-essential elements.

4.59 Petitioner is not within the intent and scope of 26 USC § 7343, *a fortiori*, 26 USC § 7203. Statutory definitions which use the term "includes" are void for vagueness and overbreadth if the term changes a definition into an *inclusion*, which it does not. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it. (See authorities cited herein addressing interpretation of statutory definitions at ¶¶ 3.8 - 3.12, *supra*).

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[56] See *Meese v. Keene*, *supra*, at 484. Supreme Court says statutory definition using "includes" is exclusive of that not mentioned therein.

[57] See 42 USC § 1983 Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights . . .

Questions under Issue (F):

(QF)1. Do the alleged duties of the Petitioner to file a statement or tax return arise from having been an officer, employee, or member of a corporation or partnership?

(QF)2. How can 26 USC § 7343 be rightfully deemed to be a "definition" when it is applied to persons, individuals, or other items or elements not expressly implicated by its language? Why did Congress call it a "definition" if it supposed to be an *inclusion*?

(QF)3. Under the law, is a "definition" the same thing as an "inclusion"? Can a provision said by a legislative body to be a "definition" be enforced as an "inclusion"?

G. Criminal liability does not attach where expert opinion has been used to determine one's liabilities and requirements.

4.60 Petitioner is an expert on the subject of tax law. Knowing as he does, that 26 USC imposes no duty or tax upon him or his property, he views as his obligation under the law to ignore the Respondent outright until he must defend his property.

4.61 He argues here with full knowledge that the Respondent needed and obtained a U.S. District Court restraining order against having to even speak about Issues A - B - C herein. (See *Walden v. IRS, supra*).

4.62 Everything Petitioner sees only serves to confirm his beliefs that the secrecy exists for the sole reason of concealing the fact that 26 USC does not impose the amounts sought from her, and that the IRS is utterly void of statutory authority to speak to her, be it concerning capital gains, Social Security taxes, or a tax compensation for services of any nature.

4.63 It is plain to the Petitioner how truly unfair it is to not only have to pay amounts that the government cannot even prove he owes, but also to be threatened imprisonment if he fails to comply with what cannot be proven to be more than the whim of his executive servants.

4.64 Another very obvious and serious conflict arises in the form of constitutional infringements. Not only can the Petitioner expect to be unduly scrutinized and perhaps harassed by the IRS merely because of his belief in the law, he understands that it all will take place in blunt defiance of his requests for proof of the law which permits such conduct.

4.65 This scenario is perpetuated in open court on every federal level. IRS Publication 17 says that the value of personal services is a cost, but Tax Court will penalize anyone who agrees. Petitioner clearly is not the citizen Congress has named as subject to Social Security (26 USC

1402(b), 3121(e), 42 USC 411(b)(2)) but he's expected to pay that tax under threat of the destruction of his entire lifestyle and probable imprisonment.

4.66 Anyone reading this can certainly understand Petitioner's reluctance or refusal to simply do what his servants tell him to do, and certainly without proof that the "tax" imposed is the intent of his representatives, his lawmakers. Petitioner sees this confrontation as his civic duty, to expose taxation without representation, which is the end result when the law (Congress) is set aside in favor of taxing agency self governance; statute is the source of all IRS authority. The law is perfect.

4.67 As an American, Petitioner cannot reconcile the existence of the IRS, if it means that IRS' threats are veiled in the patina of official right but are proven in any number of instances to be utterly hollow or altogether contrary to law. Petitioner is comfortable in his belief that 26 USC imposes no duty to file a tax return or pay an income tax.

4.68 In addition, the Respondent has expressly instructed the Petitioner, in writing, that the amounts now deemed gross income are rightfully deemed to be a cost, an amount deductible from gross income under the law.

1. Petitioner still cannot perceive of exactly how such a belief in the law is violative of any laws regarding taxation of any payment of compensation for services.

2. Petitioner does not believe that any laws have been violated when he pays no income tax and files no Form 1040. Since the IRS/Secretary of the United States is restricted by 4 USC 72 to operate only in D.C. as proven herein, Petitioner was under no compulsion to pay any sum to the Respondent under 26 USC (Tax Code). How can the Respondent be defrauded when the Petitioner owes the Respondent absolutely nothing? If Respondent (Sec. of Treas.) had authority to operate outside D.C., surely the Respondent would have proven it in any one of many instances.

3. All sums which may come into question by the IRS were paid to the Petitioner as compensation for personal services actually rendered, and only amounts over this sum are to be included in gross income, lest one violate 26 USC 83 ("amount paid" is "value of any money or property paid"). This is not only prescribed under 26 CFR 1.83-3(g) but also is prescribed in the IRS' "Tax Guide for Individuals" in language closely tailored to match, or to outright quote, provisions which support Petitioner's claim that personal services are a cost. Petitioner relies upon IRS' advice that the value of personal services paid for services actually rendered are a cost, and Petitioner understands costs to be excluded from, or deductible from, gross income under §§ 83 and 212. No gross income, no filing requirements (See 26 USC 6012). No liability, no fraud, no matter what was done with the sums in question, even if the Petitioner wants to spend money on expert advice and various

methods, and no matter who was being paid. (See **Ex.4**, IRS Publication 17 excerpts, **Tab #11**).

> 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term "amount paid" refers to **the value of any money or property** *paid for the transfer of property to which § 83 applies.*
>
> IRS Publication 17 Tax Guide for Individual, 1993-94, other: Cost basis. The basis of property you buy is usually its cost. The cost is the amount of cash and debt obligations you pay for it and **the fair market value of services** *you provide in the transaction.*"
>
> *****Cost **is the value of services** *rendered to receive compensation.*
>
> 26 CFR 1.1012-1(a) " . . . The cost is the amount paid for such property in **cash or other property**."
>
> IRS Publication 17 Tax Guide for Individual, 1995 and later editions: The basis of property you buy is usually its cost. The cost is the amount you pay **in cash, debt obligations or in other property**.
>
> ***All property** is cost.

4.69 Respondent is silent except for its contradiction of four S.Ct. decisions regarding "any property." The Secretary of the Treasury is prohibited from operating outside of D.C.; wrong? And what about the Form 2555, and 26 USC §§ 83, 212, 1001, 1011, 1012, 1402(b), 3121(e), 3401(c), 6201(a), 7214, 7343, 7651(5)(A), 4 USC § 72, 42 USC 411(b)(2), 18 USC §§ 241 and 1623? **Respondent agrees or there'd be no need for a protective Order in *Walden*.**

4.70 It is clear that, were it not for undue secrecy and a blind propensity for intimidation on the part of the IRS, Petitioner would be living life instead of dealing with one cent penalties, and facing down a DOJ investigation for promoting H&R Block. With all of this under consideration, the U.S. Attorney seeking to bring charges or an indictment against the Petitioner exudes a total disregard for the circumstances and rights of the Petitioner, especially in light of the fact that said esquire will be entirely unable to rebut, disclaim or discredit the claims made herein as ill founded, without merit, or as frivolous, unless Congress itself, to say nothing of the Supreme Court, are also rightfully labeled as such. Only their work product comprises the basis for each and all of the Petitioner's claims. The U.S. Attorney who fails to present this Complaint to any Grand Jury asked to indict the Petitioner is one with contempt for such rights, rather than mere *disregard.*

> ***"This case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a question of law. Courts have frequently held that "reasonable cause" is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken.*** See, *e.g.*, *United States v. Kroll*, 547 F.2d 393, 395-396 (CA7 1977); *Commissioner v. American Assn. of Engineers Employment, Inc.*, 204 F.2d 19, 21 (CA7 1953); *Burton Swartz Land Corp. v. Commissioner*, 198 F.2d 558, 560 (CA5 1952); *Haywood Lumber & Mining Co. v. Commissioner*, 178 F.2d at 771; *Orient Investment & Finance Co. v. Commissioner*, 83 U.S.App.D.C. at 75, 166 F.2d at 603; *Hatfried, Inc. v. Commissioner*, 162 F.2d at 633-635; *Girard Investment Co. v. Commissioner*, 122 F.2d at 848; *Dayton Bronze Bearing Co. v. Gilligan*, 281 F. 709, 712 (CA6 1922). ***This Court also has implied that, in such a situation, reliance on the opinion of a tax adviser may constitute reasonable cause for failure to file a return.*** See *Commissioner v. Lane-Wells Co.*, 321 U.S. 219 (1944) (remanding for determination whether failure to file return was due to reasonable cause, when taxpayer was advised that filing was not required).
>
> ***When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to discern error in the substantive advice of an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed expert in the first place.*** See *Haywood Lumber*, *supra*, at 771. "Ordinary business care and prudence" do not demand such actions." [58]

4.71 Between the Respondent's advice that Petitioner's cost is the value of his personal services, and the plethora of evidence, intrinsic and extrinsic, to the contrary of all the IRS conveys as purported matters of official right, Petitioner doesn't stand a chance of avoiding undue intrusion and loss of liberty and property.

> "This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. See *Agurs*, 427 U.S. at 108 ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure"). This is as it should be. ***Such disclosure will serve to justify trust in the prosecutor as the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.*** *Berger v. US*, 295 U.S. 78, 88 (1935). ***And it will tend to preserve the criminal trial***, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. See *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Estes v. Texas*, 381 U.S. 532, 540 (1965); *United States v. Leon*, 468 U.S. 897, 900-901 (1984) (recognizing general goal of establishing "procedures under which criminal defendants are 'acquitted or convicted ***on the basis of all the evidence***

[58] See *United States v. Boyle*, 469 U.S. 241, 250-01 (1985).

which exposes the truth'" (quoting *Alderman v. United States*, 394 U.S. 165, 175 (1969))). The prudence of the careful prosecutor should not therefore be discouraged." [59]

"Moreover, the Court's analysis reduces the significance of deliberate prosecutorial suppression of potentially exculpatory evidence to that merely of one of numerous factors that "may" be considered by a reviewing court. *Ante* at 683 (opinion of BLACKMUN, J.). This is not faithful to our statement in *Agurs* that "***[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable***." 427 U.S. at 106. ***Such suppression is far more serious than mere nondisclosure of evidence*** in which the defense has expressed no particular interest. ***A reviewing court should attach great significance to silence in the face of a specific request***, when responsive evidence is **later** shown to have been in the Government's possession. ***Such silence actively misleads in the same way as would an affirmative representation that exculpatory evidence does not exist when, in fact, it does*** (*i.e.*, perjury) -- indeed, the two situations are aptly described as "***sides of a single coin***." Babcock, Fair Play: Evidence Favorable to an Accused and Effective Assistance of Counsel, 34 Stan.L.Rev. 1133, 1151 (1982)." [60]

"***Failure of government to obey the law cannot ever constitute "legitimate law enforcement activity***." . . . And even if a tainted subsequent confession is "highly probative," we have never until today permitted probity to override the fact that the confession was "the product of constitutionally impermissible methods in [its] inducement." *Rogers v. Richmond*, 365 U.S. 534, 541 (1961). ***In such circumstances, the Fifth Amendment makes clear that the prosecutor has no entitlement*** to use the confession in attempting to obtain the accused's conviction." [61]

"Past decisions of this Court demonstrate that ***the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial***, not the culpability of the prosecutor. In *Brady v. Maryland*, 373 U.S. 83 (1963), for example, the prosecutor failed to disclose an admission by a participant in the murder which corroborated the defendant's version of the crime. ***The Court held that a prosecutor's suppression of requested evidence violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution***. *Id.* at 87.

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[59] See *Kyles v. Whitley*, 514 U.S. 419, 439 (1995).

[60] See *U.S. v. Bagley*, 473 U.S. 667, 714 (1985). See *Id.*, at footnote 8, "at fn.8, lead opinion: "In fact, the *Brady* rule has its roots in a series of cases dealing with convictions based on the prosecution's knowing use of perjured testimony. In *Mooney v. Holohan*, 294 U.S. 103 (1935), the Court established the rule that the knowing use by a state prosecutor of perjured testimony to obtain a conviction, and the deliberate suppression of evidence that would have impeached and refuted the testimony, constitutes a denial of due process. The Court reasoned that "a deliberate deception of court and jury by the presentation of testimony known to be perjured" is inconsistent with "the rudimentary demands of justice." *Id.* at 112. The Court reaffirmed this principle in broader terms in *Pyle v. Kansas*, 317 U.S. 213 (1942), where it held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation."

[61] See *Oregon v. Elstad*, 470 U.S. 298, 362 (1985)(dissent).

Applying this standard, the Court found the undisclosed admission to be relevant to punishment, and thus ordered that the defendant be resentenced. Since the admission was not material to guilt, however, the Court concluded that the trial itself complied with the requirements of due process despite the prosecutor's wrongful suppression. ***The Court thus recognized that the aim of due process "is not punishment of society for the misdeeds of the prosecutor, but avoidance of an unfair trial to the accused."*** *Ibid.*

This principle was reaffirmed in *United States v. Agurs*, 427 U.S. 97 (1976). ***There we held that a prosecutor must disclose unrequested evidence which would create a reasonable doubt of guilt that did not otherwise exist.*** Consistent with *Brady*, we focused not upon the prosecutor's failure to disclose, but upon the effect of nondisclosure on the trial:

Nor do we believe the constitutional obligation [to disclose unrequested information] is measured by the moral culpability, or willfulness, of the prosecutor. ***If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it.*** Conversely, if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. If the suppression of the evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." [62]

"Our overriding concern in cases such as the one before us is ***the defendant's right to a fair trial. One of the most basic elements of fairness in a criminal trial is that available evidence tending to show innocence, as well as that tending to show guilt, be fully aired before the jury; more particularly, it is that the State in its zeal to convict a defendant not suppress evidence that might exonerate him.*** See *Moore v. Illinois*, 408 U.S. 786, 810 (1972) (opinion of MARSHALL, J.). This fundamental notion of fairness does not pose any irreconcilable conflict for the prosecutor, for as the Court reminds us, the prosecutor "***must always be faithful to his client's overriding interest that 'justice shall be done.'***" *Ante* at 111. ***No interest of the State is served, and no duty of the prosecutor advanced, by the suppression of evidence favorable to the defendant. On the contrary, the prosecutor fulfills his most basic responsibility when he fully airs all the relevant evidence at his command."*** [63]

See also *Id.*, at fn.17.

4.72 The Complaint is a part of "all the relevant evidence at [Respondent's] command." Petitioner is rightfully deserving of the Respondent's grace concerning all matters involving 26 USC and personal compensation for services and capital gains, if indeed any controversies exist or arise from Petitioner's treatment of such. Indeed, Petitioner's having relied upon experts (Congress) and 26 USC rather than simply waiving the flag of refusal to pay ("tax protester") clearly shows a desire to not offend the laws of any state or of the United States.

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[62] See *Smith v. Phillips*, 455 U.S. 209, 219 (1982).
[63] See *U.S. v. Agurs*, 427 U.S. 97, 116 (1976)(dissent).

Under Issue (G):

4.73 Petitioner has relied upon Congress, purported professionals, and upon the Respondent's depiction of what is cost under the law. Petitioner feels reliance upon such as responsible and excusable conduct if indeed such a basis is faulty (which it is not). This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it.

Questions under Issue (G):

(QG)1. Can IRS Publication 17 be said to say anything other than that the value of Petitioner's personal services shall be deemed to be a cost?

(QG)2. What did the Respondent mean when it said that Petitioner's cost is the value of "services you provide in the transaction"?

(QG)5. When the courts and the IRS refuse to indulge or analyze tax law or to disclose what its parameters are in their opinion, how is it that the Petitioner can be duly punished for having to rely on his own interpretation and that of purported professionals?

H. Due process and these claims.

4.74 In January of 2005, U.S. Attorney Edward E. Groves of the U.S. Department of Justice, Tax Division, briefed conspiracy under 18 USC § 371 and the element of willfulness under 26 USC § 7203 exactly like this -

Begin quote of DOJ/Groves' memorandum.

> "At trial on the charge of conspiracy under 18 USC § 371, the United States will be required to introduce evidence supporting the conspiracy charge. In order to establish a violation of § 371 as a *Klein* conspiracy, the government must prove beyond a reasonable doubt the following:
>
> 1. An agreement between two or more people;
>
> 2. to defraud the United States; and,
>
> 3. the commission of an overt act in furtherance of the conspiracy by a member of the conspiracy; and,
>
> 4. dishonest or deceitful means were employed to accomplish the purpose of the agreement.

See *U.S. v. Caldwell*, 989 F.2d 1056 (CA9 1993); *U.S. v. Penagos*, 823 F.2d 346, 348 (CA9 1987); *U.S. v. Klein*, 247 F.2d 908 (CA2 1957), cert. denied, 355 US 924 (1958).

The fourth element outlined above is unique to the Ninth Circuit in *Klein*-type tax conspiracy prosecutions. In *Caldwell*, the Ninth Circuit found the district court's jury instructions deficient because the court did not tell the jurors they had to find that the defendant agreed to defraud the United States by "deceitful and dishonest means." *Caldwell*, 989 F.2d at 1060. The *Caldwell* panel held that the Supreme Court's use of the term "defraud" in § 371 must be limited to wrongs done by "deceit, craft or trickery, or at least by means that are dishonest." *Id.* at 1059 (citing *Hammerschmidt v. United States*, 265 F.2d 182, 188 (1924)).

The United States will also bear the burden of proof of the defendant's willfulness. Willfulness is a voluntary, intentional violation of a known legal duty. *Cheek v. U.S.*, 498 US 192, 201 (1991). Proof of willfulness may be based totally on circumstantial evidence. *United States v. Poschwatta*, 829 F.2d 1477, 1483 (CA9 1987), cert. denied, 484 US 1064 (1988); Evidence that defendants were aware of their legal duty or were warned of the impropriety of their actions is appropriate circumstantial evidence. *United States v. Collocraft*, 876 F.2d 303, 305 (CA2 1989); *United States v. Dack*, 987 F.2d 1282, 1285 (CA7 1983)." [64]

End quote of DOJ brief.

4.75 The presumption of correctness enjoyed by the IRS disappears upon introduction of evidence to the contrary, a "determination" must be the result of a consideration of all relevant facts and statutes.[65] Cited herein is an abundance of evidence to the contrary and the Respondent will forever be silent as to the defects in the reasoning and conclusions employed and enumerated.

26 CFR 601.106(f)(1) "Rule 1. ***An exaction*** by the U.S. Government, which is not based upon law, statutory or otherwise, ***is a taking of property without due process of law***, in violation of the [5th Amendment]. . . ."

§ 7214 Offenses by Officers and Employees of the United States.

"(a) Unlawful Acts of Revenue Officers or Agents.- Any officer or employee of the United States acting in connection with any revenue law of the United States-

(1) ***who is guilty of any extortion or willful oppression under color of law; or***

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[64] See U.S.' "Motion for an inquiry into potential conflict of interest" **filed 1/5/05** in #02-0133 SOM-BMK, U.S. Dist. Court, Hawaii Division, by DOJ's Edward E. Groves.

[65] 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.

> (2) ***who knowingly demands other or greater sums than are authorized by law***, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or...
>
> ***shall be dismissed from office or discharged from employment*** and, upon conviction thereof, ***shall be fined*** not more than $10,000, ***or imprisoned*** not more than five years, ***or both***."
>
> "***Failure of government to obey the law cannot ever constitute*** "***legitimate law enforcement activity***." . . . In such circumstances, the Fifth Amendment makes clear that the prosecutor has no entitlement to use the confession in attempting to obtain the accused's conviction."[66]

4.76 With concise and substantive address, Congress has named the subject of taxes in chapters 2 and 21, and has named the subject of the Form W-4 in chapter 24 (that chapter imposes withholding, not a tax). In those chapters, the subjects named by Congress are not at all the Petitioner.

4.77 Surely, had Congress intended Petitioner to be subject it would have enacted legislation saying so. The fact that it has chosen to not do so is naturally nobody's fault, for it is not a fault at all. Do the whims of the IRS govern judicial proceedings or does Congress govern judicial proceedings? What is the IRS' lawful basis for taxation of the Petitioner, and by what authority does it operate without answering to 4 USC § 72?

4.78 These queries show the Petitioner to be possessive of good faith in this claim that the IRS lacks of statutory authority and personam jurisdiction over him.

> "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)" *Id.*, at 572.[67]

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[66] See *Oregon v. Elstad*, 470 U.S. 298, 362 (1985)(dissent).
[67] See *Smith v. Gougen, supra*, at 572.

4.79 Misconduct on the part of the IRS amounts to an estoppel of the Respondent under the clean hands doctrine. [68] Courts do not exist to reward the groundless arguments of the Respondent, but are rather bound by law. In this instance the two are diametrically opposed.

> "The need to use the Court's supervisory powers to suppress evidence obtained through governmental misconduct was perhaps best expressed by Mr. Justice Brandeis in his famous dissenting opinion in *Olmstead v. United States*, 277 U.S. 438, 471-485 (1928):
>
> > Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. ***Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy***. To declare that, in the administration of the criminal law, the end justifies the means -- ***to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution***. Against that pernicious doctrine this Court should resolutely set its face.
>
> *Id.* at 485. Mr. Justice Brandeis noted that "a court will not redress a wrong when he who invokes its aid has unclean hands," *id.* at 483, and that, in keeping with that principle, the court should not lend its aid in the enforcement of the criminal law when the government itself was guilty of misconduct.
>
> > Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination.
>
> *Id.* at 484. See also *id.* at 469-471 (Holmes, J., dissenting); *id.* at 488 (Stone, J., dissenting); *Lopez v. United States*, 373 U.S. 427, 453, n.3 (1963)(BRENNAN, J., dissenting)." [69]

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[68] See *Black's*, 6th Edition: "Clean hands doctrine. Under this doctrine, equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in prior conduct has violated conscience or good faith or other equitable principal. *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483, 486. One seeking relief cannot take equitable advantage of one's own wrong. *Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 2 Dist., 128 Ill.App.3d 763, 84 Ill.Dec. 25, 471 N.E.2d 554, 558."

[69] See *U.S. v. Payner*, 447 U.S. 727, 745 (1980).

4.80 "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." [70] Regarding the assessment and collection of taxes, the threshold of due process is well defined.

> "With the IRS' broad power must come a concomitant responsibility to exercise it within the confines of the law." [71]
>
> "[18] More importantly, the statute does not require that the taxpayer put a legal classification on his protest. The Service, however, with its expertise, is obliged to know its own governing statutes and to apply them realistically." [72]
>
> "***The mission of the Service*** is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and ***to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public***, determining the extent of compliance and causes of non-compliance, ***and doing all things needful to a proper enforcement of the law***." *Federal Register*, Vol.39, #62, Fri.March 29, 1974, 1110 Organization and functions of the Internal Revenue Service, Sec.1111.1 Mission, since revised to sound less congenial.

4.81 "It has long been established that a taxpayer has the right to arrange his affairs so as to minimize the taxes he pays. See *Gregory v. Helvering*, 293 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935) . . The firm's arrangements were not illegal and so were not prohibited[.]" [73] Statutes are Petitioner's intrinsic evidence, [74] and it contains obvious protections and benefits as briefed and claimed herein. The statutory nature of Petitioner's claims requires that contradiction be comprised of and based upon law to the contrary.

Under Issue (H):

4.82 The Respondent is silent as to alternative interpretations of provisions relied upon. Respondent refuses the Petitioner access to the law, and without such access, the Petitioner is of course without the information necessary to calculate liabilities, much less determine whether the Respondent has any legal authority whatsoever.

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[70] See *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937).
[71] See *Bothke v. Fluor Engineers and Constructors, Inc.*, 713 F.2d 1405, 1413, at [11] (CA9 1983).
[72] *Id.*
[73] See *Boccardo v. C.I.R.*, 56 F.3d 1016, 1018, 1020 (CA9 1995).
[74] See *Brown & Williamson v. F.D.A.*, *supra*, statutory analysis for limitations of authority is in appellate decision.

4.83 While Congress has indeed failed to name the Petitioner, a Citizen of the United States, as a subject of any of the four chapters the Respondent applies to any seller of personal services (chapters 1, 2, 21, 24), the Respondent persists without any type of legal challenge to the claims of the Petitioner whatsoever. Statute clearly requires the Secretary of the Treasury to have express leave to operate outside of D.C., and the Respondent has been, and remains, silent in Court as to the Secretary's requisite leave under 4 USC § 72.

4.84 Due process rights of the Petitioner are violated when the law is not fully open for discussion. The Petitioner has the right to look to the law and not to the Respondent when determining any 26 USC tax liability, and if such law cannot be understood or explained by the Respondent, due process rights are violated upon the assessment of a tax liability against the Petitioner. Since Respondent must know and apply its governing statutes realistically, there is no excuse for silence as to the operation of applicable statutes and regulations.

4.85 Under the *Brown* and *Chevron* tests for statutory basis for agency authority, under the void for vagueness doctrine, the maxim of *expressio unius est exclusio alterius*, and the clear language doctrine, if clear Congressional intent to name the Petitioner as a subject to an income tax cannot be readily produced by the Respondent, and if no express legislative permission to operate as described in 4 USC § 72 is readily disclosed, due process requires all assessments and alleged liabilities contested herewith be nullified as unlawful.

4.86 The maxim *expressio unius est exclusio alterius* is particularly appropriate to interpreting definitions, as they're found in statutory scheme. A "definition" excludes from the scope of the scheme to which it applies all those things not expressly mentioned therein. The Petitioner has the right to presume any law inapplicable when definitions in statute do not expressly apply themselves to her. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it.

Questions under Issue (H):

(QH)1. Can the Respondent point to express legislative permission for the Secretary of the Treasury to operate outside of Washington, D.C., as required under 4 USC § 72? If not, by what authority does the Respondent speak to the Petitioner?

(QH)2. Can the Respondent point to a statute which identifies a U.S. Citizen, like the Petitioner, as the subject of any of the Tax Code's income taxes? If not, how does 26 USC pass the test under authorities cited herein, *supra*?

(QH)3. Does due process embrace or exclude Petitioner's access to the letter of the law?

(QH)4. How can legislation not be void for vagueness when it requires the input of the Respondent just to stay out of trouble and jail?

(QH)5. Can the Respondent enforce a law it can't openly explain without violating due process rights under the void for vagueness doctrine?

(QH)6. Inquire as to: "Mr. Gonzales, please compare Mr. Hardy to §§ 83(a), 1012 and 7203 and tell me what you think. Did you consider the exclusionary sentence of 26 USC § 7203 when charging him and/or others with failure to file? Please explain how that exclusion works. Section 7343, same questions."

(QH)7. How many sole proprietors would Congress find in jail against whom no § 6654 penalties had been assessed when it investigated the DOJ's last ten years of tax prosecutions under 26 USC § 7203 failure to file?

4.87 Petitioner has disposed of IRS' presumption of correctness with intrinsic and extrinsic evidence to the contrary, and to hold that its silence somehow now passes for rebuttal and for the practice of law is an obvious sprint from the Petitioner and his rights to due process. Lest these doctrines (void for vagueness/*expressio unius*) be abandoned, for as long as these issues remain unaddressed Petitioner must be recognized as being duly outside the scope of authority of the Respondent under 26 USC, and therefore as one over whom no federal court enjoys personam jurisdiction in relation to income taxation.

V. TAX COURT'S HOLDINGS.

5.1 Here is partial text from the final order of U.S. Tax Court in 1996 in *Talmage v. C.I.R.*, USTC docket #339-95 regarding two claims which are briefed herein. It is clear that the court contradicted *Monsanto*, *Alvarez-Sanchez*, *Gonzales*, and *Dept. of Housing & Urban Renewal v. Rucker*, all *supra* at Issue D pg.25 - 35, and the appellate decisions cited therein, as they pertain to the interpretation of the terms "any" and "any property." The court also committed through haste invalid applications not found in statutory construction. *Monsanto* and the others were not

presented in support in the *Talmage* case. Likewise is true of those cases cited herein which address specifically the gravity of "statutory definitions." (See ¶¶ 3.8 - 3.12, *supra*). **Begin here** with Tax Court's assessment of the § 83 claim briefed herein:

> "Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence of better argument) to justify summary judgment for the respondent. (protester cite omitted). Even if wages are, in effect, an exchange of value for equal value, they are nevertheless taxable income. (protester cite omitted) And even if we apply section 1001, his basis is determined under sections 1011 and 1012 as his cost, not fair market value. ***Since he paid nothing for his labor, his cost and thus his basis are zero***. (protester cite omitted) Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, *i.e.*, his wages.
>
> "Petitioner's primary argument is that section 83, Property Transferred in Connection with the Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, thereby exempting them from tax. Section 83 provides that property received for services is taxable to the recipient of the property to the extent of its fair market value minus the amount (if any) paid for the property. In attempting to equate his wages with property for which he has a tax cost, petitioner's argument is nothing more than a variation of the wages-are-not-income claim frequently advanced by tax protesters, and it is completely without merit. (protester cites omitted) Petitioner's argument fails for the same reason that other protester's arguments fail; ***the worker's cost for his services-and thus his basis-is zero, not their fair market value***."

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

5.2 While it becomes clear early on that § 83 utterly confounded the presiding officer, we see that, when faced with the brief of the § 83 claim, Tax Court's ruling **1)** conceded the statute's applicability to compensation in chapters 1, 2, 21 and 24, **2)** agreed with the interpretation of the language of the provisions relied upon and that § 83(a) "explains how property received in exchange for services is taxed," **3)** that personal services are property, and **4)** that the fair market value of property it feels is indeed within the language of 1.83-3(g) as an "amount paid" would indeed be deducted from gross income as a cost or *amount paid*. To the DOJ and Supreme Court "any property" is everything.

5.3 We see that the court hung the entire rebuttal or refutation upon the mere fact that personal services are without a basis to the worker, that the labor was not purchased by the worker

before he or she sells it to a client or employer, that because the labor is property that is not paid for by the worker it cannot be deducted as a cost by the worker. The court does so without citing any lawful basis for the exclusion of the value of personal services from "any money or property" in 1.83-3(g), nor to a lawful exception to "cash or other property" in 1.1012-1(a), and *U.S. v. Monsanto*, *Dept. of Housing & Urban Renewal v. Rucker*, and *United States v. Gonzales*, *United States v. Sanchez-Alvarez*, *supra*, unequivocally require that Tax Court do so, that any court do so, before such amounts (the FMV of services rendered) can rightfully or *lawfully* be excluded from consideration as an "amount paid." Tax Court was not faced with these four U.S. Supreme Court decisions relating to the terms "any" and "any property."

5.4 FURTHER, Tax Court went on to address, in footnote only, other claims made under *Talmage's* issues (A) through (E) in that case. It is starkly apparent that Tax Court has committed to a misinterpretation of the last phrase of § 6201(a), deciding that the language says, "which *are not* duly paid by stamp," when indeed the statute says, "which *have not been* duly paid by stamp." When Petitioner fails to pay amounts said to be a 26 USC liability on compensation for personal services, a failure to pay taxes which are duly paid by stamp has not occurred. This decision holds subparagraph (1) of subsection (a) as a subsection itself, and holds it equal to subsection (a) by ruling that its extension of "such authority" to amounts shown on returns in is addition to the authority in subsection (a), when indeed it is under or within subsection (a), and expressly refers to "such authority," and *that* authority is the one which is limited to unpaid stamp taxes. The statute's 1939 predecessor is plain and is plain evidence against this decision by its language, *i.e.*, "where such taxes have not been duly paid by stamp."

> "Petitioner also claims that sec. 6201, Assessment Authority, limits respondent's authority to assess taxes to taxes paid by stamp. Section 6201 does grant respondent assessment authority, and other authority, with respect to taxes payable by stamp, but it also grants such authority with respect to all taxes as to which returns or lists are made under the Code, and this clearly includes the income tax."

5.5 To merely say the statute operates in such a way is far from explaining how it is so. In addition, that court received an analysis of the entire Social Security statutory scheme and can only devote a footnote to it, while the Fourth Circuit in *Brown* devoted a solid fifteen plus pages to a much simpler statutory scheme for a tobacco company; this is willful dereliction.

> "Petitioner advances some other frivolous arguments. He claims that sec. 3121(e) ("An individual who is a citizen of the commonwealth of Puerto Rico (***but not otherwise a citizen of the United States***)") implies that he is not a citizen of the United States for the purposes of the income tax."

5.6 That's not what **that petitioner** claimed! Is it really "frivolous" to claim that the 26 CFR 1.1-1(c) Citizen is not the same as the § 3121(e) citizen? **That** particular petitioner claimed that the definition of citizen quoted by Tax Court above excludes him from FICA, not the income tax (chapter 1 tax). **That** particular petitioner claimed that, as a citizen of the United States, he is not the Puerto Rican (or other possession) citizen subject to Social Security. Is § 3121(e) really how Congress would set about defining U.S. Citizenship? Hardly.

> "...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**).

5.7 Tax Court sits to decide issues at law one year, but sits to penalize all those who dare bring issues at law in the next year; this is [judicial] *holiday* spanning over twenty years. (See 26 USC § 8022 Joint Committee on Taxation). **This** particular Petitioner **implies** here and now that, when Congress intends to identify him as the subject of a tax, it will say, "Any individual born or naturalized in the United States and subject to its jurisdiction" owes this tax. **This** particular Petitioner has never had the statutory legal standing to apply for or to receive a Social Security card or benefits, and the Respondent has never had authority to offer them to Americans such as the Petitioner.

5.8 Social Security is an "income tax" on portions of compensation which are *income*. Since § 83 applies to any and all compensation, it applies to compensation in Social Security chapters 2 and 21 of the Tax Code. (§ 1402(a) self employment earnings, and § 3121(a) wages and subsection (q) tips). To impose SS tax on Americans, statutory definitions must be set aside

(violated), and § 83 must be violated, by the Secretary of the Treasury and his IRS. Congress says that nonresident aliens to the Petitioner are to go to chapter 2 for self employment earnings (See 26 U.S.C. 879(a)(2) [75]); it's a tax for non-U.S. Citizens, while Petitioner is a U.S. Citizen in 26 CFR 1.1-1(c), a mere regulation. Congress says that Social Security under chapters 2 and 21 are the same tax imposed by 1939 Tax Code § 3811.

> 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. [76]

5.9 There's an abundance of evidence that Petitioner **cannot be both citizens**, the U.S. Citizen in chapter one and the citizen liable for and eligible for Social Security. Petitioner must meet the statutory definition of "citizen" in 26 USC chapters 2 and 21 to be liable for Social Security. The, Supreme, Court, ". . . 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[.]" [77] "It is axiomatic that the statutory definition of the term excludes unstated meanings of that term," [78] "[h]owever severe the consequences." [79] The proof and [aroma] of the IRS' lawlessness is overwhelming, the theft now exposed is rampant; who's in charge of the law? Clearly, not the judiciary or Congress.

5.10 Litigation of these conclusions showed them to be unassailable, each court having to commit derelictions, fundamental errors and miscarriages of justice to accessorize the misconduct exposed.

---

[75] See 26 USC § 879 Tax Treatment of Certain Community Income in the Case of Nonresident Alien Individuals. (a) General rule.-In the case of a married couple 1 or both of whom are nonresident alien individuals..., such community income shall be treated as follows: (2) Trade or business income..., shall be treated as provided in section 1402(a)(5).

[76] Clearly, 1939 Tax Code § 3811 was merely split into chapters 2 and 21 of the 1954 Tax Code.

[77] See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972).

[78] See *Meese v. Keene*, *supra*, at 484.

[79] See *Jay v. Boyd*, *supra*, at 357 (1956).

VI. CONCLUSION.

6.1 The rights and duties of the Petitioner are plainly stated in statutes relied upon, and absent Congressional leave to deviate from said statutes the Petitioner must act upon the conclusions stated. The absence of logical, cogent, and authoritatively supported refutation rooted in accepted principles and standards is Petitioner's validation of precisely what is claimed and complained of herein.

6.2 Until proof of leave required under 4 USC § 72 is disclosed, and until the Respondent informs America of the statute wherein Congress clearly subjects the Petitioner to the chapters it applies to him, Petitioner must be understood to be a Citizen of the United States over which the Respondent, *a fortiori*, any federal Court hearing controversies under 26 USC, enjoys no personam jurisdiction whatsoever. For these reasons Petitioner believes that no violation of any law occurs when he files no 1040, and when no "income tax" is paid on the value of his personal services or capital gains. The law is on the side of the Petitioner as one who is not in violation of anything, "willfully" or otherwise.

> "There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have ***found the essential elements of the crime beyond a reasonable doubt***." *United States v. Nelson*, 137 F.3d 1094, 1103 (9th Cir. 1998) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))."

> "[4] . . . Because this fact is ***a necessary element of the statutory definition*** of anabolic steroids, which is ***in turn a necessary element of the offense***, failure to offer this evidence resulted in insufficient evidence to sustain the jury's verdict."

See *U.S. v. Orduno Aguilera*, No.98-50346 (CA9 filed 7/19/99). And -

> "No rational trier of fact (a judge) could have found that this standard was met for Estrada. ***The record was barren of evidence that he participated in the conspiracy***."

> "[2] Even though Estrada initially denied living in the trailer, his denial was as consistent with non-participating knowledge of the crime as it was with complicity in the crime. ***When there is an innocent explanation for a defendant's conduct as well as one that suggests that the defendant was engaged in wrongdoing, the government must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that the latter explanation is the correct one. In Estrada's case, the government produced no such evidence***."

See *U.S. v. Estrada-Macias*, No.97-10115 (CA9 filed 7/12/00). Why is it that Americans can't get this from the IRS and the Courts in relation to tax matters and related allegations under 18 U.S.C. § 371 Conspiracy to defraud?

6.3 Seeking review of the IRS for statutory limitations of authority is a failure to state a claim under 5 USC §§ 701 - 706 which is for that express purpose, and protective orders block discovery to that end. (*Walden, supra*). The individual's right to arrange personal affairs according to law is abolished under these policies of the Respondent. When such silence is necessary to the collection of amounts allegedly imposed by law as income taxes, due process rights of every nature become meaningless.

6.4 The fact that the Respondent demands money from Americans so it can afford and facilitate their false arrest and imprisonment, after swearing to protect them at all times, convinces the Petitioner that "democracy" is imposed by force, not simply *enjoyed*. The Respondent needs a restraining order against these issues despite years of preparedness to rebut them. Anyone having knowledge that the provisions relied upon herein do not operate as briefed is urged to explain exactly how Petitioner is mistaken as to such operation by answering the questions presented for review beneath each issue briefed.

VII. VERIFICATION.

7.1 I, David R. Myrland, do hereby declare under penalties of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed this 19th day of December, 2005.

David R. Myrland, Affiant/Complainant

7.2 The above affirmation was duly subscribed and sworn to before me, this 19th day of December, 2005, by David R. Myrland.

7.3 I, Chandra E. Laferriere, am a Notary under license from the State of Washington whose Commission expires on 5-1-2009, and be it known by my Hand and my Seal as follows:

Notary signature

CHANDRA E. LAFERRIERE NOTARY PUBLIC COMMISSION EXPIRES 5-1-2009 STATE OF WASHINGTON

///

UNITED STATES CONGRESS

WASHINGTON, D.C.

CERTIFICATE OF SERVICE

I, Brad Garrett, do hereby declare that on December 28, 2005, I placed in U.S. 1st Class Post and in adequate packaging the attached documents (18 U.S.C. § 4 Complaint with exhibits and attachments (Tabs #1 through #13), one copy for each member of Congress below) addressed to the following members of Congress at the two addresses below and as instructed by postal protocol personnel:

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Albert Gonzales
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

I, Brad Garrett, am a citizen of the United States, I am over 18 years of age, and I am not a party to this action.

Date: December 28, 2005

Brad Garrett

Signature

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Tab #7

- DECLARATION -

I, David R. Myrland, do declare the accuracy of the exhibits attached hereto, and the claims made with respect to said exhibits.

I declare under penalties of perjury that the attached exhibits are true and correct, and that they represent precisely what I claim to be so.

Exhibit 1. Protective Order issued by U.S. Dist. Court (Austin, TX) against discussion of the law.

Exhibit 2. 26 CFR 1.83-6 amendment described. - 8 pages.

Exhibit 3. Affidavit of Tim Garrison, accountant of thirty years. - 7 pages.

Exhibit 4. IRS Publication 17 "Tax Guide for Individuals" excerpts. - 8 pages.

Exhibit 5. Three annually consecutive copies of 26 CFR 602.101. - 13 pages.

I, David R. Myrland, do hereby declare under penalties of perjury (28 USC § 1746) that the exhibits attached hereto is not misrepresented or fabricated in any way, and that statements made which rely upon them are true and correct to the very best of my knowledge. Executed this 18th day of December, 2005, by David R. Myrland.

David R. Myrland

Dated: 12/18/05

Respectfully submitted:

David R. Myrland

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Tab #8

Exhibit 1:

Exhibit 1. Protective Order issued against questions/discovery regarding tax law in *Walden, Jim L. Walden v. United States, et al.*, #A-**05**-CA-444-LY, U.S. Dist. Court, Austin, TX.

Exhibit: 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JIM L. WALDEN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. A-05-CA-444-LY**
	§	
UNITED STATES OF AMERICA,	§	
JOHN F. PANISZCZYN, and	§	
JAMES ASHTON,	§	
	§	
Defendants.	§	

ORDER ON UNITED STATES MOTION FOR PROTECTIVE ORDER

Came on to be heard the United States of America's Motion for Protective Order and the Court being of the opinion that the motion should be GRANTED, it is hereby

ORDERED and DECREED that United States of America's Motion for Protective Order is GRANTED and that any discovery in this matter is prohibited~~, it is further~~

~~ORDERED and DECREED that the Plaintiff's Complaint for the Perpetuation of Testimony is DENIED.~~

Signed this 2nd day of August 2005.

Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

Tab #9

Exhibit 2:

Exhibit 2. 26 CFR 1.83-6 amendment described. See also - "**Proposed Regulations, ¶ 49,538, Proposed Amendments of Regulations (EE-81-88)**, Federal Register 12/5/94."

Exhibit: 2

The 1.83-6 Amendment:

The individual who comes to understand this issue can claim substantial knowledge of the operation of the Internal Revenue Code (hereinafter "IRC"). This exercise is not for the beginner and it would serve you to have first reviewed the other contents of this filing.

This exercise is about a particular regulation challenged in Tax Court by petition and brief in June, 1994. The regulation was, and still is, key to the use of the Form W-4, and up until a few months after my challenge was written in a way so as to constitute the only *written* avenue for the imposition of that form from chapter 24 upon chapter 1 subjects.

This information is presented to highlight two particular axioms, (1) regulations cannot deviate from statutory parameters, Congress writes the law and the IRS is bound by it, and (2) the Form W-4 used to collect the amount of withholding from paychecks is a provision of chapter 24 and it is imposed on the Citizen they say we are, the U.S. Citizen of 26 CFR 1.1-1(c) in chapter 1 of the Code. How is this cross-chapter enforcement accomplished and is it appropriate or lawful? Is the chapter 1 Citizen really subject to the provisions of chapter 24? If not, why must they deal with wage withholding via the Form W-4?

From my very first exposure to materials written about the IRC this question has dominated the discussion from the standpoint of popular concerns, loss of privacy, loss of control over one's finances, confusion and frustration, and perplexing elements of enforcement, spawning a veritable plethora of challenges, most are hair-brained but some are valid. The simple facts or standards relevant to this exercise are these:

The Internal Revenue Code is perfect and its internal operation is precise.

The imposition of chapter 24 provisions upon chapter 1 subjects must be permitted by law and provided for in the IRC.

Regulations cannot deviate from statute or cause conflict between certain statutes. Congressional intent is first and agencies are bound by the laws that Congress enacts.

Something must change when a regulation, by its terms, requires that the law be violated. The credits claimed on a tax return must be available under the law to the filer of the return.

What you will see here is a single chapter 1 invitation to chapter 24 to send over the Form W-4 and its requirements found there (chapter 24 is § 3401-3456, Form W-4 is § 3402). The regulation did not require outright that the chapter 1 wages must withheld upon via the W-4, but rather said that the employer must impose § 3402 provisions to get

a deduction for the wages as an expense of doing business. As you will see, this created three conflicts which were statutory derogation (§ 162), technical (§ 31(a)), and profoundly fundamental (§ 83(a)).

The challenged regulation had been in force since its promulgation in 1978. In it, readily identifiable is an element of chapter 24 encroachment, the mingling of provisions and requirements from one chapter with those of another, without regard for pertinent definitions, encroachment that makes it possible to enforce chapter 24 provisions (Form W-4) against the chapter 1 subject and his income; the Citizen of the United States as defined in that chapter, in 26 CFR 1.1-1(c). I know of no other receptacle in chapter 1 which invites the Form W-4's application there.

This regulation, 26 CFR 1.83-6, is still the chapter 24 pipeline into chapter 1, but its revision under the weight of these challenge speaks volumes about just how much the IRS is hiding in its attempt to subvert the true operation of the IRC. In discussion regarding the amendments it is openly stated that no such withholding requirement remains (for the employer to get a deduction for wages paid). The three challenges are these:

> **Statutory**: How did § 83(a) operate when you imposed chapter 24 income taxes on the wages paid out by the employer? To impose these withholding requirements on the fair market value of the services performed deprives the employee of §§ 83, 212, 1001, 1011, and 1012.
>
> **Regulatory**: By requiring W-4 procedures (all the confusion, loss of privacy) be imposed by the employer, the regulation unreasonably imposes requirements to get a deduction for the wages paid out when Congress freely permits the deduction as a cost under § 162 of the IRC.
>
> **Due process**: Private sector employees aren't eligible for the credit they need against their year's end liability of the wage withholding under chapter 24 that they dealt with all year. One provision allows an employee to get, for example, credit for the $5k deducted from their paycheck against the $4500 the IRS booklet says to pay which would get a tax refund of $500 after filing the Form 1040 tax return. That provision is § 31(a) but only public servants are eligible, as dictated by regulations promulgated (written) thereunder; 26 CFR 1.31-2(b). [1] [2]

---

[1] This is the infamous year's end tax refund where the amount of withholding taken out of paychecks with the Form W-4 from chapter 24 is credited against the total owed for the year imposed under chapter 1; pay to little and you pay some more, pay to much and you get a refund.

[2] It is important to note the definition of the term "employee" from chapter 24 which imposes the tax deducted from private sector employee paychecks. When this definition is honored and the Form W-4 is applied only to THIS employee, this regulation is only harmonious.

> § 3401(c) EMPLOYEE.-For the purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of

While it is a valid challenge under general principles to argue that the Form W-4 from chapter 24 enforced against a chapter 1 (U.S. Citizen) violated § 3401(c) which defines "employee" as a federal public servant, [3] I chose to omit this challenge in favor of these others. The three challenges were stated as follows:

Begin briefed challenge.

1. In chapter 1, under § 83, regulation 1.83-6 instruct employers to deduct and withhold upon taxable excesses paid in connection with the performance of services and to do so in accordance with § 3402 in chapter 24.

> 1.83-6(a)(1) General rule. In the case of a transfer of property in connection with the performance of services . . . a deduction is allowable under section 162 or 212, to the person for whom such services were performed. The amount of the deduction is equal to the amount includible as compensation in the gross income of the service provider, under section 83(a), (b), or (d)(2) . . .
>
> 1.83-6(a)(2) Special rule. If the service provider is an employee of the person for whom the services were performed, such deduction is allowed for the taxable of the employer . . . ***but only if the employer deducts and withholds upon such amount in accordance with § 3402.***

2. The deduction and withholding in accordance with § 3402 pertains only to amounts includible in gross income and § 83 permits only the excess to be so included; the deduction does not pertain to compensation that is excluded from gross income by law.

3. In the event of an excess being paid and when amounts are withheld, the employee has been placed in a regulatory black hole.

4. Code § 3402, in chapter 24, outlines requirements pertaining to the filing of a Form W-4 upon commencement of employment. Code § 31 is the only chapter 1 provision allowing an individual to receive credit for any payments of the tax imposed by chapter 24 against the chapter 1, § 1, liability.

Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

[3] You will actually find two definitions of the term "employee" in regulations under § 3401(c), one is a specific definition which adheres to the narrow language of the statutory definition (federal public servant), while the other provides a "general" definition which, of course, embraces any and all individuals having an employer. See 26 CFR 31.3401(c)-1(a) and (b). This is a primary regulatory deviation from statute in the IRS' standard operating procedures and in the big picture.

§ 31(a) Wage Withholding for Income Tax Purposes.-

(1) In General.-The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

5. Eligibility for this § 31 credit is limited to foreign corporate employees and gov't employees and thus, said statute excludes the Petitioner from eligibility.

26 CFR 1.31-2(b) Federal and State employees and employees of certain foreign corporations. The provisions of this section shall apply to the amount of a special refund allowable to an employee of a Federal agency or a wholly owned instrumentality of the United States, ...employee of any State of political subdivision thereof (or an instrumentality of any one or more of the foregoing), and to the amount of a special refund allowable to employees of certain foreign corporations.

6. **FURTHER**, another element of 1.83-6(a)(1) demands clarification. It would serve to first note a very basic and fundamental provision permitting the person for whom services are performed to deduct all amounts paid in wages and salaries for such services from gross income derived from the conduct of trade or business.

§ 162(a) In General.- There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including –

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered.

7. Compare the terms of this provision to this requirement out of 26 CFR 1.83-6(a)(1) which is clearly pervasive.

" . . . The amount of the deduction is equal to the amount includible as compensation in the gross income of the service provider, under § 83(a), (b) . . ."

8. While § 162 freely permits a deduction of all amounts paid out as compensation for services, said regulation only permits a deduction of amounts includible in gross income. Even if no excess, as defined under § 83, is paid to employees for services rendered, the FMV that *is* paid out should surely still constitute a deductible cost to the employer who paid it.

9. **FURTHER**, although § 83 addresses the FMV of the services of the Petitioner, nowhere in its language, or decisions thereunder, is there any allowance for the FMV of the Petitioner's labor to be included in gross income. Under § 83, it is only the excess

over the value of any property paid by the Petitioner to his employer that is to be included in gross income, and not the FMV of any property paid that is to be so included.

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

10. Regulation 1.83-6(a)(2) must be declared a nullity because, 1) It conflicts with statutory provisions permitting an employer's deductions for all amounts paid for services without regard for their inclusion gross income of the service provider; 2) It requires the collection of tax imposed by chapter 24 from those who cannot claim credit for having paid said tax against their chapter 1 liability; 3) It seeks to tax as gross income those amounts not includible in gross income under § 83(a). These are in addition to those intrusions into personal privacy of the employee to which the Form W-4 amounts.

End briefed challenge.

Original regulation 1.83-6:

> 26 CFR 1.83-6. Deduction by employer. – (a) *Allowance of a deduction.* – (1) *General rule.* In the case of a transfer of property in connection with the performance of services, or a compensatory cancellation of a nonlapse restriction described in section 83(d) and 1.83-5, a deduction is allowable under section 162 or 212, to the person for whom the services were performed. ***The amount of the deduction*** is equal to the amount includible as compensation in the gross income of the service provider, under section 83(a), (b), or (d)(2), but only to the extent such amount meets the requirements of section 162 or 212 and the regulations thereunder. ***Such deduction shall be allowed*** only for the taxable year of such person in which or with which ends the taxable year of the service provider in which such amount is includible as compensation. . . .
>
> (2) *Special rule.* If the service provider is an employee of the person for whom the services are performed, ***such deduction is allowed*** for the taxable year of the employer in which or with which ends the taxable year of the employee in which such amount is includible as compensation, but ***only if the employer deducts and withholds upon such amount in accordance with section 3402***. A deduction will not be disallowed under the preceding sentence if the employer does not deduct and withhold upon amounts excluded from gross income, such a amounts excluded under section 79, section 101(b), or . . .

This regulation was challenged as briefed above, and months later it was amended in accordance with the challenge; employers are no longer required to deduct and

withhold with the Form W-4 – at least to get a deduction for the expense of paying employees.

Proposed regulations:

Proposed Regulations
[¶ 49,538]

Proposed Amendments of Regulations (EE-81-88), published in the Federal Register 12/5/94:

Transfer of property by employer: Deduction: Withholding requirement.-Amendments of Reg. § 1.83-6, relating to the special rule that requires an employer to deduct and withhold income tax as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performances of services, are proposed. Amendments of Reg. § 1.83-6, as proposed on November 16, 1983, are withdrawn.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: This document contains proposed ***amendments to the regulations to eliminate the special rule that requires an employer to deduct and withhold income tax*** as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performance of services.

Overview (this is partial)

"This document contains the proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 83(h) of the Internal Revenue Code of 1986 (Code). ***The proposed regulations eliminate the requirement to deduct and withhold income tax*** as a prerequisite for claiming a deduction."

"Taxpayers have expressed a concern that it is often difficult to satisfy the prerequisite that employers must deduct and withhold income tax from payments in kind as a condition for claiming a deduction. ***The proposed amendments to the section 83 regulations would address this concern by eliminating this prerequisite***, while still ensuring consistent treatment between service recipients and service providers as required by the statute. In addition, because the deduction no longer would be conditioned on withholding, there no longer would be a need to have different rules for those who receive services from employees and those who receive services from others.

Under the proposed amendments, the existing general rule and special rule would be replaced by a revised general rule that more closely follows the statutory

language of section 83(h). The service recipient would be allowed a deduction for the amount "included" in the service provider's gross income. . ."

What you just saw is a proposal to amend the only chapter 1 regulation linking private employees there to the procedures and provisions of chapter 24, the Form W-4, the withholding from paychecks.

So, the employer gets an expense deduction only for the amount he pays to employees that is "included" in the employee's gross income. What about the "amount paid" in § 83(a) that doesn't make it to gross income? IRC § 83 provides that only the amount "over the amount paid" is to be included in gross income. Why can't the employer get a deduction of amounts paid to employees that only equals the employees "amount paid" or *cost*? The IRS takes care of this by presuming that everything is gross income, and by avoiding discussion of § 83(a) and its enforcement.

Revised regulation:

26 CFR 1.83-6(a) -

(2) *Special rule*. For the purposes of paragraph (a)(1) of this section, the services provider is deemed to included the amount as compensation in gross income if the person for whom the services were performed satisfies in a timely manner all requirements under section 6041 or section 6041A, and the regulations thereunder, with respect to that amount of compensation. For purposes of the preceding sentence, whether the person for whom the services were performed satisfies all requirements of section 6041 or section 6041A, and the regulations thereunder , is determined without regard to § 1.6041-3(c) (exception to payments to corporations). In the case of a disqualifying disposition of stock described in section 421(b), an employer that otherwise satisfies all requirements of section 6041 and the regulations thereunder will be considered to have so timely if the Form W-2 or Form W2c, as appropriate, is furnished to the employee or former employee, and is filed with the federal government, on or before the date on which the employer files the tax return claiming the deduction relating to the disqualifying disposition.

End revised regulation.

So, the requirement for the employer to deduct and withhold from paychecks has been removed. This would be good news if it weren't for this from the "overview":

> ***Although the withholding requirement would be eliminated*** as a prerequisite for claiming a deduction, ***the proposed amendments would not relieve the service recipient from any applicable withholding requirements of subtitle C or from the statutorily prescribed penalties or additions to tax for***

> ***noncompliance with those requirements***. Thus, for example, if an employer transferred to an employee property to which section 83 applies and failed to withhold income tax on the payment, the employer would be liable for the tax under section 3403. . . In addition, ***nothing in this proposed regulation would relieve the service recipient from the penalties or additions to tax*** for noncompliance with the requirements of section 6041 or 6041A (relating to information reporting) to the extent they otherwise apply.

How can an employer be both a chapter 1 (subtitle A) and chapter 24 (subtitle C) employer at the same time? Does that employer file a Tax Court petition (§ 6213) or does he file a claim for abatement (§ 6404)? If an employer withholds, the employee is still deprived of § 83(a), and he still must claim a § 31(a) credit on his tax return for which he is ineligible to escape paying the withheld amounts all over again. So all the IRS did was to observe 1/3 of the challenge, coming into harmony with § 162 which allows the employer to deduct wages as a cost. The employer can get the deduction if no withholding occurs, but suffer the penalties still for not doing so. For as long as the § 3401(c) definition of "employee" and § 3121(e) definition of "citizen" are applied to private U.S. Citizen employees, this regulation is still the chapter 1 invitation to use the Form W-4 and to deduct FICA from paychecks. An employer doesn't have to withhold to deduct as a cost the wages paid out to employees, but if withholding doesn't occur penalties will be assessed.

***End 1.83-6 amendment discussion**.

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TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

David R. Myrland, Tim Garrison, Lee J. Herold, Paul Broward, Greg Weiss, Jim L. Walden, and We the People, Complainants, vs. UNITED STATES DEPARTMENT OF JUSTICE, ALBERT GONZALES, UNITED STATES TREASURY DEPARTMENT, JOHN W. SNOW, INTERNAL REVENUE SERVICE, MARK W. EVERSON, U.S. DISTRICT COURT, GARR M. KING, LEE YEAKEL, ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, TERRY L. MARTIN, U.S. TAX COURT, JOEL BERGER, NORTHWEST AIRLINES (a corporation), and all those similarly situated or so involved, marital communities spared, DEFENDANTS.	) No. _____))) AFFIDAVIT OF FACT of) Co-Complainant Tim Garrison.)))))))))))))

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I appreciate this chance to be a co-Complainant with Dave Myrland and others and to have the opportunity to inform the Congress of the United States of America of my experiences in dealing with the Internal Revenue Service over these last 33 years.

During my years of practice with the public and the Internal Revenue Service I have seen many issues from small areas of concern to major errors with outright deceit and fraud on the part of IRS personnel.

I began my Tax Accounting career after graduating from the University of Washington in Accounting in 1972. I then studied and passed the Enrollment Exam to practice before the Internal Revenue Service in 1973 and last I studied and passed the Tax and Financial portions of the CPA Exam but did not complete the last two parts due to personal circumstances. I have taken many additional Tax Courses and have reviewed the IRS Code Book and accompanying Federal Statues and with this additional research and through practice have found many laws that conflict with the way they are administered.

To be brief I have chosen 7 of my major tax concerns to discuss at this time which I work with continually and of which I have tried to resolve but found no support from the Internal Revenue or the Legislature as of this date.

Concern #1 - Word/Term Definitions should be standardized:

Because of the IRS being allowed to use word crafting and uncommon meanings for word/terms in the code the majority of Americans are filing Tax Returns under false pretenses. I believe that Congress should establish a standard terminology to be used in all of its laws and not have the meaning of a word change from one law to the next. Documents should be drafted so that a reasonably educated man can read and understand a document and not be mislead by it.

Example: The IRS Code Book defines terms so that the average American is deceived into believing he is a government worker which is a privileged occupation subject to tax and not a worker in the private sector who is not subject to tax. Because of deceptive terms this private sector worker files and pays taxes on his income when in reality he was not required to do so. This word deception is done so that no violations of the Constitution are made and that the private sector citizen is filing under a voluntary and not mandatory compliance. As I see it:

IRC Sec. 3401 – Definitions:

(a) Wages.
For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer,

including the cash value of all remuneration (including benefits) paid in any medium other than cash;…

(c) Employee.
For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the forgoing. The term "employee" also includes an officer of a corporation. [A "United States Corporation", defined in Sec. 207 of the Public Salary Tax Act as, "a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States". However, we are instructed by the IRS in Pub. 15A that such officers are only to be considered "employees" if they are paid as a consequence of their positions.]

(d) Employer. For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person…

Note: Withholding therefore only applies to the pay of federal government workers, exactly as it always has (plus "State government workers, since 1939, and those of the District of Columbia since 1921). Remembering the inclusion-exclusion rule: Where the remuneration (compensation) of one group is explicitly identified as an object of the law, whether for withholding or as "income", or in any other respect, the remuneration of an omitted group is explicitly excluded as an object of the law.

Note: The word "includes" when use in defining a word can be considered to mean "only".

The way in which the Internal Revenue Code acknowledges the 'self-employed' is patronage beneficiaries performing work for, and being paid by, the federal government. This is of the same misleading character as that relating to "employees". The related portions of the code have nothing to do with or say about private-sector workers/entrepreneurs.

Sec. 7701 - Definitions:
(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -
(26) Trade or business. The term "trade or business" (Only) includes the performance of the functions of a public office.

Note: The instructions accompanying the 1099 forms themselves are even more explicit: The instructions so state "Trade or business reporting only. Report on Form 1099-MISC only when payments are made in the course of your trade or business".

It therefore seems pretty clear that unless one's work involves the performance of the functions of a public office one has no "self-employment income and no net earnings therefrom" and need file no return regarding the proceeds of self-employment; and no private sector person or company should ever issue a 1099 MISC.

Concern #2 - Enforcement of the 1998 INTERNAL REVENUE RESTRUCTURING AND REFORM ACT found lacking.

In 1997 Senator William Roth spearheaded an extensive tax-collection reform effort by investigating the IRS and uncovering horrifying stories of abuse. The IRS was to change its methods of administration however, very little of this has happened. Once the heat was off, the IRS returned to their old methods and today they are as abusive as ever. My question is who is responsible to oversee that the IRS follows the guidelines set down by the 1998 Reform Act? I could not locate such an office.

I called the Government Accounting Office in Seattle, and in Washington D.C. and even spoke to the lady who drafted the Reform summary report for congress and even she did not know who it was that monitored the IRS compliance efforts. With no one holding the IRS accountable for their correction efforts the Reform Act is lost, the abuse continues and the IRS becomes even more hated.

Concern #3 - False Collection Letters paid because of fear of abuse.

The IRS sends out letters to Citizens to see if they can get them to pay because of fear. Many times I have seen collection letters sent by the IRS stating that a citizen has a balance owing for some unexplained or ridiculous reason. When a query is sent to the Service Center they either do not respond or send back a letter thanking the Citizen for updating their records. I have known many Citizens who have just paid this 'balance owing' amount to satisfy this IRS rather than have the IRS inquire further. I understand that the IRS collects millions of dollars with these fishing letters even though most Citizens do not owe the amount.

Concern #4 - IRS Agents not held accountable due to lack of enforcement of compliance.

IRS agents will not sign statements and stand behind their answers when asked a question. They issue forms without signature and purposely leave off information that changes the

meaning of law. I have found that most of today's IRS Agents have little to no background in the Tax Laws they are trying to enforce. These Agents will not sign anything or stand behind their claims with supporting code yet they continue to enforce these unknown laws.

I find that today that many IRS Agents seem only concerned with how much they can make a Citizen pay. They are not helpful in explaining the tax laws because either they do not know them as their job requirement says they should or they are purposely being vague so as to mislead the citizen or both.

Seattle IRS Agent Sandy Bowman refused to answer questions given to her in writing and claimed that the IRS code book was the law. She was arrogant, abusive and did not help at all in explaining the laws she was trying to enforce. To me she created unnecessary hardship in her representation of the government. Under Title 31 paragraph O subparagraphs .207 and .208 A Treasury employee is required by answer a question including questions from Taxpayers. Why then do IRS Agents deliberately defy the law.

What can a private sector citizen who is being accused of being a Government Employee do to correct this classification error? I had a client who this same Sandy Bowman assessed over $25,000 in additional tax to and the client was not provided any basis in law. If the IRS were more open and helpful about the tax laws their image would greatly improve. But instead they are deceitful and misleading and last of all helpful to the public.

Concern #5 - IRS Abuse and Lying costs everyone time and money especially the Government.

I was called into the Seattle Service Center to answer questions about abusive Tax Shelters by Tacoma Agent Terry Martin because I attached a letter asking unanswered tax questions to a Tax Return I prepared. Mr. Martin promised me three times to provide me with IRS Counsel to answer questions about the Tax Laws and when reminded of this promise finally told me to find competent tax counsel on my own. I am competent Tax Counsel for several hundred Citizens. I do not need to seek outside counsel for what I can look up on my own. What I wanted was to talk to an IRS Attorney and ask him where certain laws are found that are being enforced that are not in the IRS Code Book and what the Statutes as implemented by Congress so state as opposed to the IRS Code Book. This meeting never happened and was deliberately misrepresented by Terry Martin. Mr. Martin at our first meeting agreed that I was not

promoting abusive Tax Shelters and in the end just wasted my time and the Governments money with his meeting.

The IRS has a mission statement - to provide an understanding of tax laws, yet when ask they provide no understanding but try and avoid the questions. Many times I have written the IRS with a question about an unclear tax Law and receive no answer. As a Return Preparer I now have a problem. I must guess the solution because the Law is not how the IRS operates.

If I guess right then all is good. But if I guess wrong then I have caused the Taxpayer to overpay his Tax Liability which is wrong. Why doesn't the IRS answer questions about the Tax Laws? And why do judges relieve IRS Agents from answering questions or prevent citizens from properly defending themselves in tax court? The IRS exemption from judicial review stands in the way of my being truly effective for my clientele.

Concern #6 - Civil Penalties are being wrongfully assessed for asking simple questions of clarification.

I have Clients who have been assessed $500 civil penalties for asking questions to clarify issues uncertain on the filing of their Tax Returns. When no answer is provided and the question is attached to the Taxpayer's Return the Service Center often will claim the Return to be a frivolous Return, again not provide any answers and fine the Taxpayer a $500 civil penalty. How can this be following the IRS Mission Statement? There is no help being given here. It is totally unfair to penalize people who cannot be expected to understand the tax Code in the first place.

Concern #7 - IRS Competence and Efficiency is becoming worse not better.

Today the IRS takes months to process a simple request and often looses documentation and does not inform the taxpayer for months if at all. With today's technology why does it take the IRS months to do a few minutes work. I receive many letters from the IRS stating that they need 30, 60 or even 90 more days to research an answer. Then another similar letter is received and finally no answer is ever provided.

The IRS spends billions on improvements yet no improvements are seen. It now takes much longer for a response from the IRS than it did 20 years ago. Also a phone call to the IRS often takes over 30 minutes to get a response of any value. This also is much worse that it was

20 years ago. To me the IRS is drowning in incompetence and inefficiency and yet billions are spent for improvements that never seem to be effective. I would go out of business if I operated this way so why can't the IRS improve itself. It has more resources to make improvements than anyone on earth but even so these improvements do not take place. This needless incompetence adds a distinct and readily identifiable cost or excise upon the business I am seeking to conduct.

Summary and Overview - The conduct and performance of the Internal Revenue Service is a disgrace to the people of the United States and their Government.

Is it not the Governments' duty to help its people prosper and not to snag them into poverty? The arbitrary treatment dispensed by the IRS proves to me that Congress (tax law) is insignificant and non-influential in the minds and procedures which affect my clients, in simple words the IRS does what it likes. On a daily basis and in a broad pattern over many years I have watched the IRS be what it is and behave as it does, and it has always served as a hurdle to the efficient operation of my accounting practice. I have read the brief attached hereto and see that litigation yields a result identical to what my administrative efforts have yielded.

Verification.

I, Timothy G. Garrison, do declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief. Signed on this 19th day of December 2005.

Timothy G. Garrison, Affiant/Complainant

The above affirmation was duly subscribed and sworn to before me, on this 19th day of December, 2005, by Timothy G. Garrison.

I, Chandra E. Lafferiere, am a Notary under license from the State of Washington whose Commission expires on 5-1-09, and be it known by my Hand and my Seal as follows:

Signature of Notary

CHANDRA E. LAFERRIERE NOTARY PUBLIC COMMISSION EXPIRES 5-1-2009 STATE OF WASHINGTON

Tab #11

Exhibit 4:

Exhibit 4. IRS Publication 17 "Tax Guide for Individuals" excerpts showing reflection of statutes claimed by Petitioner to have been violated. Here, the IRS clearly states that all property is a cost, and that Petitioner's cost is the value of personal services.

Exhibit: 4

Department of the Treasury

Internal Revenue Service

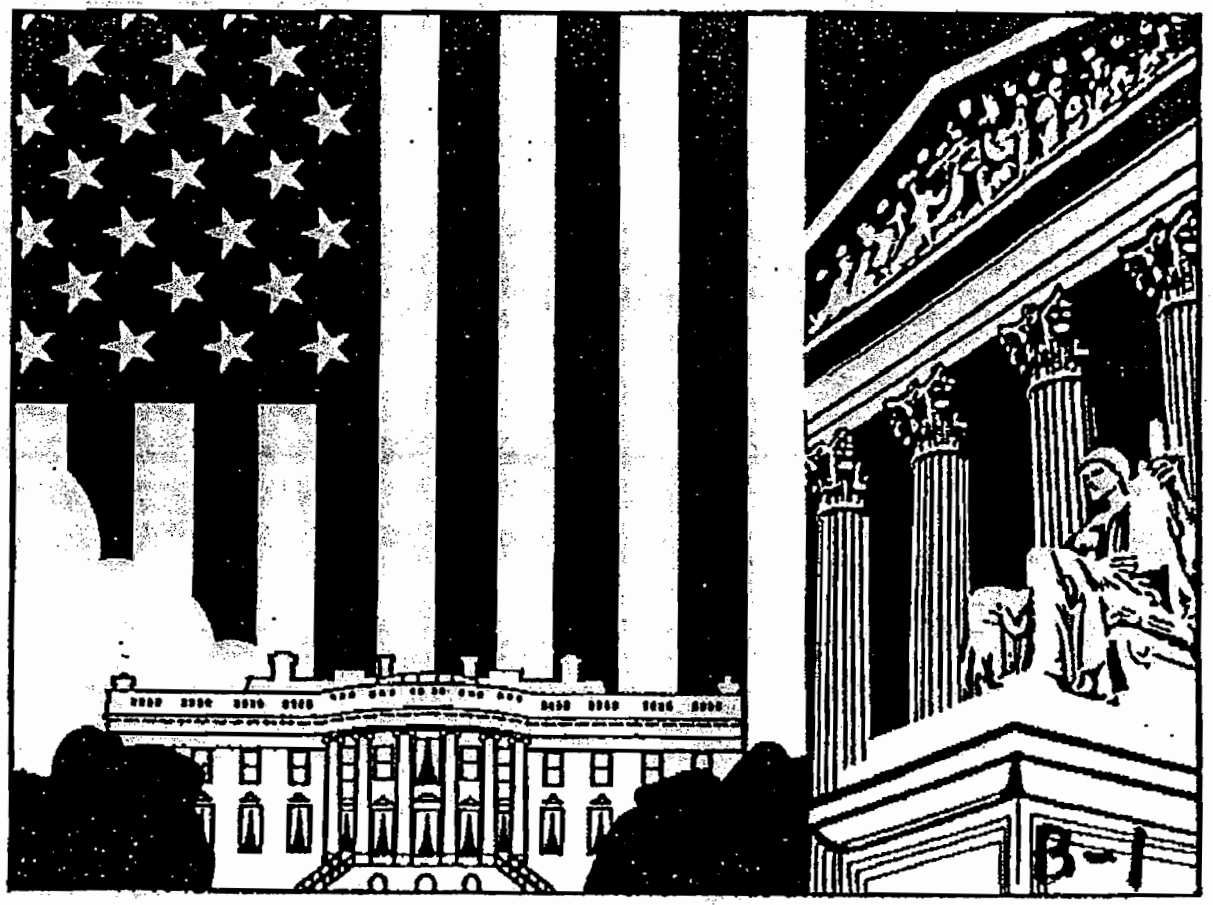
Your Federal Income Tax

For Individuals

Publication 17
Cat. No. 10311G

For use in preparing 1993 Returns

1993 TAX GUIDE



FOR INDIVIDUALS

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The four chapters in this part discuss investment gains and losses, including how to figure your basis in property. A gain from selling or trading stocks, bonds, or other investment property may be taxed or it may be tax free, at least in part. A loss may or may not be deductible. These chapters also discuss gains from selling property you personally use — including the special rules for selling your home. Nonbusiness casualty and theft losses are discussed in Chapter 26 of Part Five.

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☐ 564 Mutual Fund
☐ 917 Business Us

See 26 CFR 1.83-3(g)

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others are:

services,

Cost Basis

The basis of property you buy is usually its cost. The cost is the amount of cash and debt obligations you pay for it and the fair market value of other property or services you provide in the transaction. Your cost also includes amounts you pay for:

1) Sales tax charged on the purchase,
2) Freight charges to obtain the property,
3) Installation and testing charges,
4) Excise taxes,
5) Legal and accounting fees (when required to be capitalized),
6) Revenue stamps,
7) Recording fees, and
8) Real estate taxes (if assumed for the seller).

In addition, the cost basis of real estate and business assets will include other items.

Loans with low or no interest. If you buy property on any time-payment plan that charges little or no interest, the basis of your property is your stated purchase price, less the amount considered to be unstated interest. You generally have unstated interest if your interest rate is less than the applicable federal rate.

For more information, see *Unstated Interest* in Publication 537.

Real Property

If you buy real property, certain fees and other expenses you pay are part of your basis in the property. Real property is land and generally anything erected on, growing on, or attached to land. For example, a building is considered real property.

Assumption of a mortgage. If you buy property and assume an existing mortgage on the property, your basis includes the amount you pay for the property in cash plus the unpaid mortgage you assume.

4) Transfer taxes,
5) Title insurance, and
6) Any amounts the seller owes that you agree to pay, such as back taxes or interest, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

You must reasonably allocate these fees or costs between land and improvements, such as a building, to figure the basis for depreciation of the improvements. Settlement fees do not include amounts placed in escrow for the future payment of items such as taxes and insurance.

Expenses paid to obtain a mortgage. Most deductible expenses may be deducted in full in the tax year in which you pay them. If you pay a deductible expense to obtain a mortgage, however, you generally must capitalize and deduct the expense ratably over the term of the mortgage. Do not add the expense, such as points (such as prepaid interest), to the basis of the related property.

Points on home mortgage. Special rules may apply to an amount you pay as points to obtain a mortgage for your main home. If that amount meets certain requirements, you can deduct it in full as points for the year in which you pay it. For more information, see *Points* in Publication 936, *Home Mortgage Interest Deduction.*

Nondeductible expenses. Any nondeductible expenses you pay to purchase real property, such as an appraisal fee for your home or other nonbusiness, you generally add to the basis of the property. Other expenses, such as fire insurance premiums, cannot be added to the basis of the property.

Real estate taxes. If you buy real property and agree to pay taxes the seller owed on it, treat the taxes you pay as part of the cost. You cannot deduct them as taxes paid.

If you reimburse the seller for taxes the seller paid for you, you can usually deduct

B-2

Department of the Treasury

Internal Revenue Service

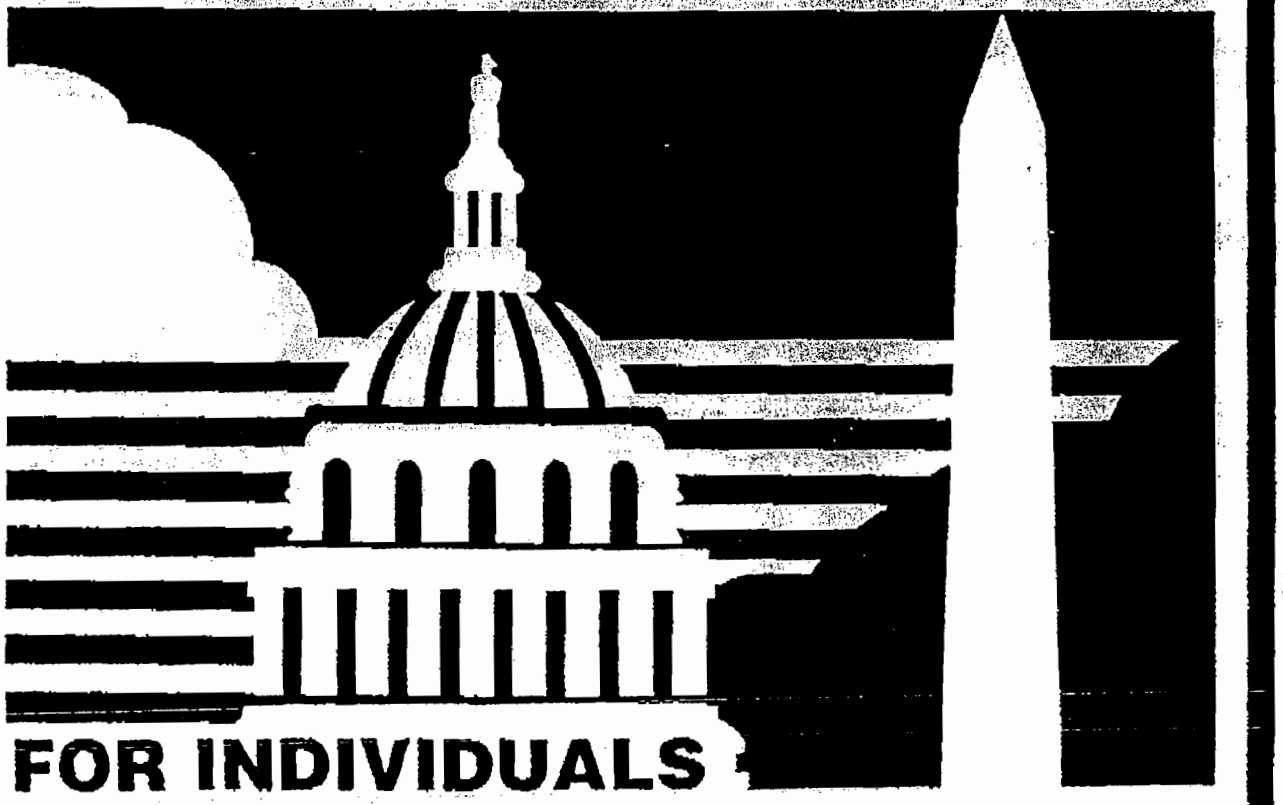
Your Federal Income Tax

For Individuals

Publication 17
Cat. No. 10311G

For use in preparing **1994** Returns

TAX GUIDE 1994



FOR INDIVIDUALS

B-3

Part Three.

Gains and Losses

The four chapters in this part discuss investment gains and losses, including how to figure your basis in property. A gain from selling or trading stocks, bonds, or other investment property may be taxed or it may be tax free, at least in part. A loss may or may not be deductible. These chapters also discuss gains from selling property you personally use — including the special rules for selling your home. Nonbusiness casualty and theft losses are discussed in Chapter 27 in Part Five.

14. Basis of Property

Introduction

This chapter discusses how to figure your basis in property and covers the following topics:

- Cost basis of property you purchase.
- Adjustments to basis after you acquire property.
- Property you acquire because of a casualty or condemnation.
- Property you receive in exchange for your services.
- Business or investment property you acquire in an exchange or trade-in.
- Property you receive as a gift.
- Property transferred to you because of a divorce.
- Property you inherit.
- Stocks, bonds, and mutual funds in which you invest.

Basis is a way of measuring your investment in property for tax purposes. Use the basis of property to figure the deductions for depreciation, amortization, depletion, and casualty losses. Also use it to figure gain or loss on the sale or other disposition of property. You must keep accurate records of all items that affect the basis of property so you can make these computations.

Useful Items

You may want to see:

Publication

- ☐ 448 Federal Estate and Gift Taxes
- ☐ 525 Taxable and Nontaxable Income
- ☐ 537 Installment Sales
- ☐ 550 Investment Income and Expenses
- ☐ 551 Basis of Assets
- ☐ 564 Mutual Fu
- ☐ 917 Business

See 26 CFR 1.83-3(g)

Cost Basis

The basis of property you buy is usually its cost. The cost is the amount of cash and debt obligations you pay for it and the fair market value of other property or services you provide in the transaction. Your cost also includes amounts you pay for:

1) Sales tax charged on the purchase,
2) Freight charges to obtain the property,
3) Installation and testing charges,
4) Excise taxes,
5) Legal and accounting fees (when they must be capitalized),
6) Revenue stamps,
7) Recording fees, and
8) Real estate taxes (if assumed for the seller).

In addition, the cost basis of real estate and business assets will include other items.

Loans with low or no interest. If you buy property on any time-payment plan that charges little or no interest, the basis of your property is your stated purchase price, less the amount considered to be unstated interest. You generally have unstated interest if your interest rate is less than the applicable federal rate.

For more information, see *Unstated Interest* in Publication 537.

Real Property

If you buy real property, certain fees and other expenses you pay are part of your basis in the property. Real property is land and generally anything erected on, growing on, or attached to land. For example, a building is considered real property.

Assumption of a mortgage. If you buy property and assume an existing mortgage on the property, your basis includes the amount you pay for the property plus the unpaid mortgage you assume.

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4) Transfer taxes,
5) Title insurance, and
6) Any amounts the seller owes that you agree to pay, such as back taxes or interest, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

You must reasonably allocate these fees or costs between land and improvements, such as a building, to figure the basis for depreciation of the improvements. Settlement fees do not include amounts placed in escrow for the future payment of items such as taxes and insurance.

Expenses paid to obtain a mortgage. If you pay a deductible expense to obtain a mortgage, you generally must capitalize and deduct the expense ratably over the term of the mortgage. Do not add the expense, such as points (prepaid interest), to the basis of the related property.

Points on home mortgage. Special rules may apply to amounts you and the seller pay as points when you obtain a mortgage to purchase your main home. If these amounts meet certain requirements, you can deduct them in full as points for the year in which they are paid. If you deduct seller-paid points, reduce your purchase price by that amount when determining your basis. For more information, see *Points* in Publication 936, *Home Mortgage Interest Deduction*.

Nondeductible expenses. Any nondeductible expenses you pay to purchase real property, such as an appraisal fee for your home or other nonbusiness property, you generally add to the basis of the property. Other expenses, such as fire insurance premiums, cannot be added to the basis of the property.

Real estate taxes. If you buy real property and agree to pay taxes the seller owed on it, treat the taxes you pay as part of the cost. You cannot deduct them as taxes paid.

B-4

Department of the Treasury

Internal Revenue Service

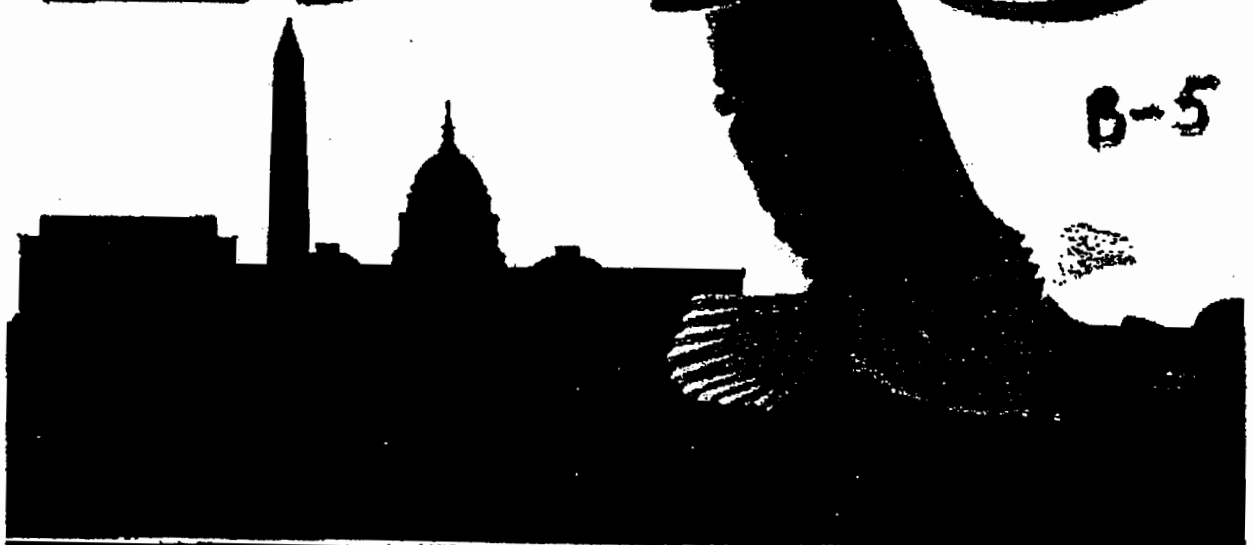
Your Federal Income Tax

For Individuals

Publication 17
Cat. No. 10311G

For use in preparing
1995
Returns

TAX GUIDE 1995



B-5

FOR INDIVIDUALS

Part Three.

Gains and Losses

The four chapters in this part discuss investment gains and losses, including how to figure your basis in property. A gain from selling or trading stocks, bonds, or other investment property may be taxed or it may be tax free, at least in part. A loss may or may not be deductible. These chapters also discuss gains from selling property you personally use — including the special rules for selling your home. Nonbusiness casualty and theft losses are discussed in Chapter 27 in Part Five.

14.

Basis of Property

Introduction

This chapter discusses how to figure your basis in property and covers the following topics:

- Cost basis of property you purchase.
- Adjustments to basis after you acquire property.
- Property you acquire because of a casualty or condemnation.
- Property you receive in exchange for your services.
- Business or investment property you acquire in an exchange or trade-in.
- Property you receive as a gift.
- Property transferred to you because of a divorce.
- Property you inherit.
- Stocks, bonds, and mutual funds in which you invest.

Basis is a way of measuring your investment in property for tax purposes. Use the basis of property to figure the deductions for depreciation, amortization, depletion, and casualty losses. Also use it to figure gain or loss on the sale or other disposition of property. You must keep accurate records of all items that affect the basis of property so you can make these computations.

Useful Items

You may want to see:

Publication

- ☐ 448 Federal Estate and Gift Taxes
- ☐ 525 Taxable and Nontaxable Income
- ☐ 537 Installment Sales
- ☐ 550 Investment Income and Expenses
- ☐ 551 Basis of Assets
- ☐ 564 Mutual Fun
- ☐ 917 Business U

See 26 CFR 1.1012-1(a)

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ees or closing in the basis of

Cost Basis

The basis of property you buy is usually its cost. The cost is the amount you pay in cash, debt obligations or in other property. Your cost also includes amounts you pay for:

1) Sales tax charged on the purchase,
2) Freight charges to obtain the property,
3) Installation and testing charges,
4) Excise taxes,
5) Legal and accounting fees (when they must be capitalized),
6) Revenue stamps,
7) Recording fees, and
8) Real estate taxes (if assumed for the seller).

In addition, the cost basis of real estate and business assets will include other items.

Loans with low or no interest. If you buy property on any time-payment plan that charges little or no interest, the basis of your property is your stated purchase price, less the amount considered to be unstated interest. You generally have unstated interest if your interest rate is less than the applicable federal rate.

For more information, see *Unstated Interest* in Publication 537.

Real Property

If you buy real property, certain fees and other expenses you pay are part of your basis in the property. Real property is land and generally anything erected on, growing on, or attached to land. For example, a building is considered real property.

Assumption of a mortgage. If you buy property and assume an existing mortgage on the property, your basis includes the amount you pay for the property plus the unpaid mortgage you assume.

Settlement costs. You can include in the basis of property you purchase the settlement fees and closing costs that are for buying it. You cannot include the fees and costs that are for getting a loan on the property. (A

1) Abstract fees (sometimes called abstract of title fees),
2) Charges for installing utility services,
3) Legal fees (including title search and preparing the sales contract and deed),
4) Recording fees,
5) Surveys,
6) Transfer taxes,
7) Owner's title insurance, and
8) Any amounts the seller owes that you agree to pay, such as back taxes or interest, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

You must reasonably allocate these fees or costs between land and improvements, such as buildings, to figure the basis for depreciation of the improvements. Allocate the fees according to the fair market values of the land and improvements at the time of purchase.

Settlement costs *do not include* amounts placed in escrow for the future payment of items such as taxes and insurance.

Some settlement fees and closing costs you *cannot* include in the basis of the property are:

1) Fire insurance premiums.
2) Rent for occupancy of the property before closing.
3) Charges for utilities or other services relating to occupancy of the property before closing.
4) Charges connected with getting a loan, such as:
   a) Points (discount points, loan origination fees),
   b) Mortgage insurance premiums,
   c) Loan assumption fees,
   d) Cost of a credit report, and
   e) Fees for an appraisal required by a lender.
5) Fees for refinancing a mortgage.

B-6

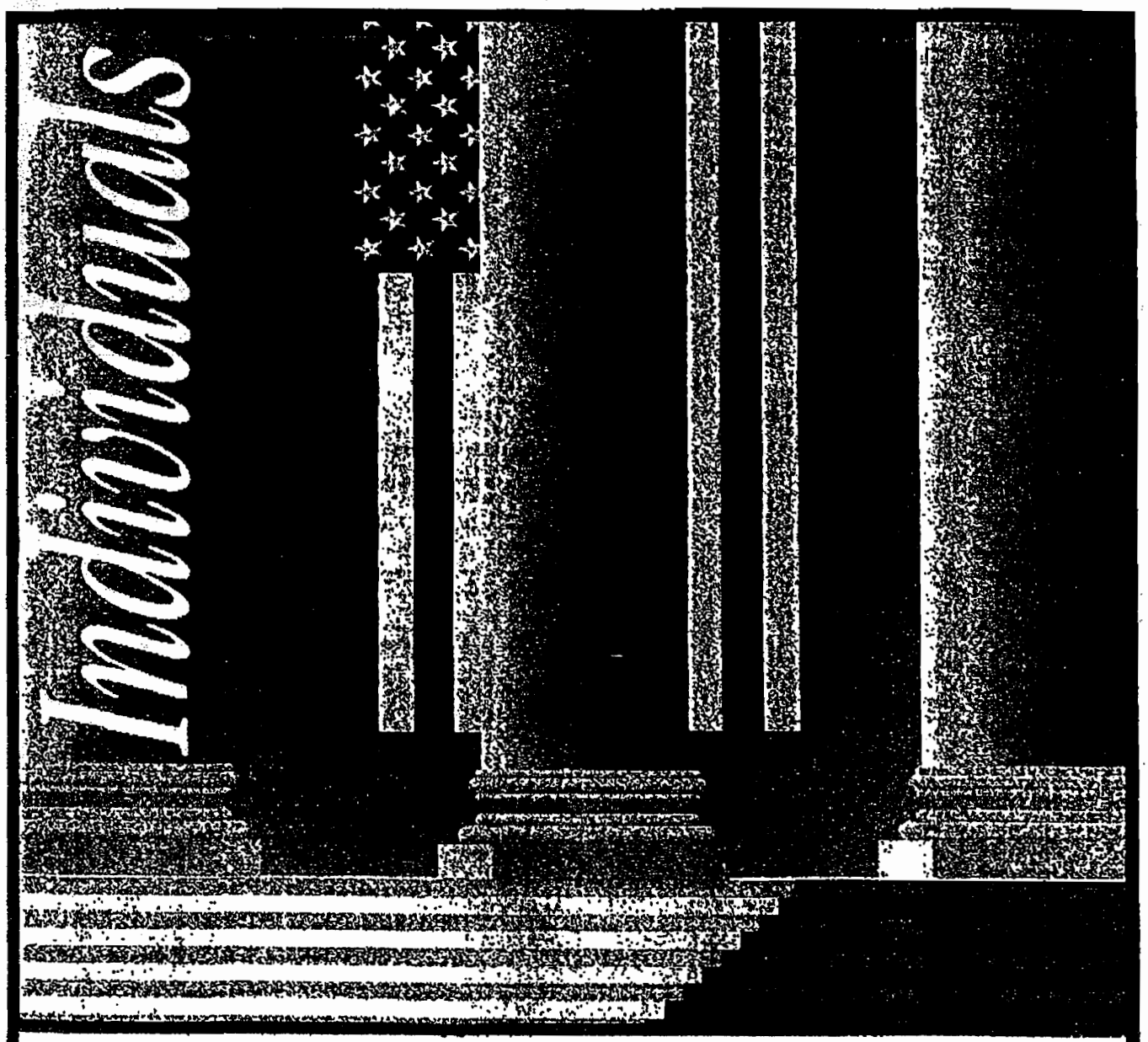
Department of the Treasury
Internal Revenue Service

Your Federal Income Tax

For Individuals

Publication 17
Catalog Number 10311G

For use in preparing **2000** Returns



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B-7

Part Three.

Gains and Losses

The four chapters in this part discuss investment gains and losses, including how to figure your basis in property. A gain from selling or trading stocks, bonds, or other investment property may be taxed or it may be tax free, at least in part. A loss may or may not be deductible. These chapters also discuss gains from selling property you personally use — including the special rules for selling your home. Nonbusiness casualty and theft losses are discussed in chapter 27 in Part Five.

14.

Basis of Property

- ☐ 544 Sales and Other Dispositions of Assets
- ☐ 550 Investment Income and Expenses
- ☐ 551 Basis of As
- ☐ 564 Mutual Fur
- ☐ 946 How To Di

See 26 CFR 1.1012-1(a)

Introduction

This chapter discusses how to figure your basis in property and covers the following topics.

- Cost basis of property you buy.
- Adjustments to basis after you receive property.
- Basis other than cost.

Basis is the amount of your investment in property for tax purposes. Use the basis of property to figure gain or loss on the sale, exchange, or other disposition of property. Also use it to figure deductions for depreciation, amortization, depletion, and casualty losses. You must keep accurate records of all items that affect the basis of property so you can make these computations.

If you use property for both business and personal purposes, you must allocate the basis based on the use. Only the basis allocated to the business use of the property can be depreciated.

Your original basis in property is adjusted (increased or decreased) by certain events. If you make improvements to the property, increase your basis. If you take deductions for depreciation or casualty losses, reduce your basis.

Generally, the higher your basis for an asset, the less gain you will have to report on its sale. The higher your basis in a depreciable asset, the higher your depreciation deductions.

Useful Items

You may want to see:

Publication

- ☐ 15-B Employer's Tax Guide to Fringe Benefits
- ☐ 523 Selling Your Home
- ☐ 525 Taxable and Nontaxable Income
- ☐ 535 Business Expenses
- ☐ 537 Installment Sales

Cost Basis

The basis of property you buy is usually its cost. The cost is the amount you pay in cash, debt obligations, or other property. Your cost also includes amounts you pay for the following items.

- Sales tax charged on the purchase.
- Freight charges to obtain the property.
- Installation and testing charges.
- Excise taxes.
- Legal and accounting fees (when they must be capitalized).
- Revenue stamps.
- Recording fees.
- Real estate taxes (if assumed for the seller).

In addition, the basis of real estate and business assets may include other items.

Loans with low or no interest. If you buy property on any time-payment plan that charges little or no interest, the basis of your property is your stated purchase price minus any amount considered to be unstated interest. You generally have unstated interest if your interest rate is less than the applicable federal rate.

For more information, see *Unstated Interest and Original Issue Discount* in Publication 537.

Real Property

Real property, also called real estate, is land and generally anything built on, growing on, or attached to land.

If you buy real property, certain fees and other expenses you pay are part of your cost basis in the property.

If you buy improvements, such as buildings, and the land on which they stand for a lump sum, allocate your cost basis between the land and improvements to figure the basis for depreciation of the improvements. Allocate the costs according to the fair market values of the land and improvements at the time of purchase.

Fair market value (FMV) is the price at which the property would change hands between a buyer and a seller, neither having to buy or sell, and both having a reasonable knowledge of all necessary facts. Sales of similar property on or about the same date ... FMV of the ...

If you buy ... subject to) an ...erty, your ba... pay for the ...e paid on the mortgage.

Settlement costs. You can include in the basis of property you buy the settlement fees and closing costs you pay for buying the property. (A fee for buying property is a cost that must be paid even if you buy the property for cash.) You cannot include fees and costs for getting a loan on the property.

The following are some of the settlement fees or closing costs you can include in the basis of your property.

- Abstract fees (abstract of title fees).
- Charges for installing utility services.
- Legal fees (including title search and preparation of the sales contract and deed).
- Recording fees.
- Surveys.
- Transfer taxes.
- Owner's title insurance.
- Any amounts the seller owes that you agree to pay, such as back taxes or interest, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

Settlement costs ***do not include*** amounts placed in escrow for the future payment of items such as taxes and insurance.

The following are some of the settlement fees and closing costs you ***cannot*** include in the basis of property.

1) Fire insurance premiums.
2) Rent for occupancy of the property before closing.
3) Charges for utilities or other services related to occupancy of the property before closing.
4) Fees for refinancing a mortgage.
5) Charges connected with getting a loan. The following are examples of these charges.

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Tab #12

Exhibit 5:

Exhibit 5. Three annually consecutive copies of 26 CFR 602.101 (excerpts) as amended showing its evolvement over such period regarding return filing requirements found there. Included is Treasury Decision ("T.D.") 8335 relating to the subject *amendment*.

Exhibit: 5

Form **2555**

Department of the Treasury
Internal Revenue Service

Foreign Earned Income

▶ See separate instructions. ▶ Attach to Form 1040.

OMB No. 1545-0067

1998

Attachment Sequence No. **34**

For Use by U.S. Citizens and Resident Aliens Only

Name shown on Form 1040 | Your social security number

Part I General Information

1 Your foreign address (including country) | 2 Your occupation

3 Employer's name ▶

4a Employer's U.S. address ▶

b Employer's foreign address ▶

5 Employer is (check any that apply): a ☐ A foreign entity b ☐ A U.S. company c ☐ Self d ☐ A foreign affiliate of a U.S. company e ☐ Other (specify) ▶

6a If, after 1981, you filed Form 2555 to claim either of the exclusions or Form 2555-EZ to claim the foreign earned income exclusion, enter the last year you filed the form. ▶

b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here ▶ ☐ and go to line 7 now.

c Have you ever revoked either of the exclusions? ☐ Yes ☐ No

d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. ▶

7 Of what country are you a citizen/national? ▶

8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See **Second foreign household** on page 3 of the instructions ☐ Yes ☐ No

b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. ▶

9 List your tax home(s) during your tax year and date(s) established. ▶

Next, complete either Part II or Part III. If an item does not apply, enter "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test (See page 2 of the instructions.)

10 Date bona fide residence began ▶ , and ended ▶

11 Kind of living quarters in foreign country ▶ a ☐ Purchased house b ☐ Rented house or apartment c ☐ Rented room d ☐ Quarters furnished by employer

12a Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No

b If "Yes," who and for what period? ▶

13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See instructions.) ☐ Yes ☐ No

b Are you required to pay income tax to the country where you claim bona fide residence? (See instructions.) ☐ Yes ☐ No

If you answered "Yes" to 13a and "No" to 13b, you do not qualify as a bona fide resident. Do not complete the rest of this part.

14 If you were present in the United States or its possessions during the tax year, complete columns **(a)–(d)** below. **Do not** include the income from column **(d)** in Part IV, but report it on Form 1040.

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

15a List any contractual terms or other conditions relating to the length of your employment abroad. ▶

b Enter the type of visa under which you entered the foreign country. ▶

c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation ☐ Yes ☐ No

d Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No

e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** (L) **1998**

IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1998, or other tax year beginning , 1998, ending , 19 OMB No. 1545-0074

Label

(See instructions on page 18.)

Use the IRS label. Otherwise, please print or type.

LABEL HERE

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see page 18.	Apt. no.	▲ IMPORTANT! ▲ You must enter your SSN(s) above.
City, town or post office, state, and ZIP code. If you have a foreign address, see page 18.		

Presidential Election Campaign (See page 18.)

	Yes	No
Do you want $3 to go to this fund?		
If a joint return, does your spouse want $3 to go to this fund?		

Note: *Checking "Yes" will not change your tax or reduce your refund.*

Filing Status

Check only one box.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. ▶

4 ☐ Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 18.)

Exemptions

6a ☐ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a.

b ☐ **Spouse**

c **Dependents:**

(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see page 19)
			☐
			☐
			☐
			☐
			☐
			☐

If more than six dependents, see page 19.

d Total number of exemptions claimed

No. of boxes checked on 6a and 6b

No. of your children on 6c who:
- lived with you
- did not live with you due to divorce or separation (see page 19)

Dependents on 6c not entered above

Add numbers entered on lines above ▶

Income

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see page 20.

Enclose, but do not staple, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7
8a	**Taxable** interest. Attach Schedule B if required		8a
b	**Tax-exempt** interest. DO NOT include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required		9
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 21)		10
11	Alimony received		11
12	Business income or (loss). Attach Schedule C or C-EZ		12
13	Capital gain or (loss). Attach Schedule D		13
14	Other gains or (losses). Attach Form 4797		14
15a	Total IRA distributions 15a	b Taxable amount (see page 22)	15b
16a	Total pensions and annuities 16a	b Taxable amount (see page 22)	16b
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17
18	Farm income or (loss). Attach Schedule F		18
19	Unemployment compensation		19
20a	Social security benefits 20a	b Taxable amount (see page 24)	20b
21	Other income. List type and amount—see page 24		21
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶		22

Adjusted Gross Income

If line 33 is under $30,095 (under $10,030 if a child did not live with you), see EIC inst. on page 36.

23	IRA deduction (see page 25)	23	
24	Student loan interest deduction (see page 27)	24	
25	Medical savings account deduction. Attach Form 8853	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed health insurance deduction (see page 28)	28	
29	Keogh and self-employed SEP and SIMPLE plans	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▶	31a	
32	Add lines 23 through 31a		32
33	Subtract line 32 from line 22. This is your **adjusted gross income** ▶		33

Form **1040A** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** (L) **1998** IRS Use Only—Do not write or staple in this space.

OMB No. 1545-0085

Label (See page 18.)

Use the IRS label. Otherwise, please print or type.

LABEL HERE

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see page 19.	Apt. no.	▲ IMPORTANT! ▲ You must enter your SSN(s) above.
City, town or post office, state, and ZIP code. If you have a foreign address, see page 19.		

Presidential Election Campaign Fund (See page 19.)

	Yes	No
Do you want $3 to go to this fund?	☐	☐
If a joint return, does your spouse want $3 to go to this fund?	☐	☐

Note: *Checking "Yes" will not change your tax or reduce your refund.*

Filing status

Check only one box.

1 ☐ Single
2 ☐ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's social security number above and full name here. ▶
4 ☐ Head of household (with qualifying person). (See page 20.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 21.)

Exemptions

6a ☐ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a.
b ☐ **Spouse**
c **Dependents:**

If more than seven dependents, see page 21.

(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualified child for child tax credit (see page 22)
			☐
			☐
			☐
			☐
			☐
			☐
			☐

No. of boxes checked on 6a and 6b
No. of your children on 6c who:
• lived with you
• did not live with you due to divorce or separation (see page 23)
Dependents on 6c not entered above
Add numbers entered on lines above

d Total number of exemptions claimed.

Income

Attach Copy B of your Forms W-2 and 1099-R here.

If you did not get a W-2, see page 24.

Enclose, but do not staple, any payment.

7	Wages, salaries, tips, etc. Attach Form(s) W-2.		7
8a	**Taxable** interest. Attach Schedule 1 if required.		8a
b	**Tax-exempt** interest. DO NOT include on line 8a. 8b		
9	Ordinary dividends. Attach Schedule 1 if required.		9
10a	Total IRA distributions. 10a	10b Taxable amount (see page 24).	10b
11a	Total pensions and annuities. 11a	11b Taxable amount (see page 25).	11b
12	Unemployment compensation.		12
13a	Social security benefits. 13a	13b Taxable amount (see page 27).	13b
14	Add lines 7 through 13b (far right column). This is your **total income.** ▶		14

Adjusted gross income

15	IRA deduction (see page 28). 15		
16	Student loan interest deduction (see page 28). 16		
17	Add lines 15 and 16. These are your **total adjustments.**		17
18	Subtract line 17 from line 14. This is your **adjusted gross income.** If under $30,095 (under $10,030 if a child did not live with you), see the EIC instructions on page 36. ▶		18

Department of the Treasury—Internal Revenue Service

Form 1040EZ **Income Tax Return for Single and Joint Filers With No Dependents** (L) **1998**

OMB No. 1545-0675

Your first name and initial | Last name | **Your social security number**

Use the IRS label here

If a joint return, spouse's first name and initial | Last name

Home address (number and street). If you have a P.O. box, see page 7. | Apt. no. | **Spouse's social security number**

City, town or post office, state, and ZIP code. If you have a foreign address, see page 7.

Presidential Election Campaign (See page 7.)

Note: *Checking "Yes" will not change your tax or reduce your refund.*

Do you want $3 to go to this fund? ▶

If a joint return, does your spouse want $3 to go to this fund? ▶

Income

Attach Copy B of Form(s) W-2 here. Enclose, but do not staple, any payment.

1 Total wages, salaries, and tips. This should be shown in box 1 of your W-2 form(s). Attach your W-2 form(s). 1

2 Taxable interest income. If the total is over $400, you cannot use Form 1040EZ. 2

3 Unemployment compensation (see page 8). 3

4 Add lines 1, 2, and 3. This is your **adjusted gross income.** If under $10,030, see page 9 to find out if you can claim the earned income credit on line 8a. 4

Note: *You must check Yes or No.*

5 Can your parents (or someone else) claim you on their return?
Yes. Enter amount from worksheet on back. **No.** If **single,** enter 6,950.00. If **married,** enter 12,500.00. See back for explanation. 5

6 Subtract line 5 from line 4. If line 5 is larger than line 4, enter 0. This is your **taxable income.** ▶ 6

Payments and tax

7 Enter your Federal income tax withheld from box 2 of your W-2 form(s). 7

8a **Earned income credit** (see page 9).
b Nontaxable earned income: enter type and amount below.
Type $ 8a

9 Add lines 7 and 8a. These are your **total payments.** 9

10 **Tax.** Use the amount on **line 6 above** to find your tax in the tax table on pages 20–24 of the booklet. Then, enter the tax from the table on this line. 10

Refund

Have it directly deposited! See page 12 and fill in 11b, 11c, and 11d.

11a If line 9 is larger than line 10, subtract line 10 from line 9. This is your **refund.** 11a

▶ b Routing number

▶ c Type: Checking Savings d Account number

Amount you owe

12 If line 10 is larger than line 9, subtract line 9 from line 10. This is the **amount you owe.** See page 14 for details on how to pay. 12

I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and accurately lists all amounts and sources of income I received during the tax year.

Sign here ▶ Your signature | Spouse's signature if joint return. See page 7.

Keep copy for your records. Date | Your occupation | Date | Spouse's occupation

For Official Use Only

code of federal regulations

Internal Revenue

26

PART 600 TO END

Revised as of April 1, 1993

described	control number
1.106(e)	1545-0081
1.201(e)	1545-0619
1.201(i)	1545-0619
1.201(j)	1545-0019
1.201(n)	1545-0019
1.201(o)	1545-0019
1.401	1545-0257
1.402	1545-0023
1.402 (c) and (d)	1545-0257
1.402(e)	1545-0014
1.403	1545-0257
1.403(c)	1545-0023
1.403(d)	1545-0024
1.404 (d) and (f)	1545-0012
1.504	1545-0150
1.860	1545-0800
1.752(f)(2)	1545-0429

c. 7805 of the Internal Revenue Code of 4 (68A Stat. 917; 26 U.S.C. 7805))
D. 8011, 50 FR 10222, Mar. 14, 1985, as nded at 51 FR 7442, Mar. 4, 1986. Redeated at 53 FR 19187, May 26, 1988]

RT 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

2.601 OMB Control numbers.

a) *Purpose.* This part collects and plays the control numbers assigned collections of information in Internal Revenue Service regulations by Office of Management and Budget MB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply h the requirements of §§ 1320.7(f), 0.12, 1320.13, and 1320.14 of 5 CFR 1320 (OMB regulations implening the Paperwork Reduction), for the display of control nums assigned by OMB to collections of ormation in Internal Revenue Serv regulations. This part does not dis control numbers assigned by the ce of Management and Budget to lections of information of the reau of Alcohol, Tobacco, and Fire ms.

b) *Cross-reference.* For display of trol numbers assigned by the ice of Management and Budget to ernal Revenue Service collections information in the Statement of

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1-1	1545-0067
1.23-5	1545-0074
1.25-1T	1545-0922
	1545-0930
1.25-2T	1545-0922
	1545-0930
1.25-3T	1545-0922
	1545-0930
1.25-4T	1545-0922
1.25-5T	1545-0922
1.25-6T	1545-0922
1.25-7T	1545-0922
1.25-8T	1545-0922
1.28-1	1545-0619
1.31-2	1545-0074
1.32-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-8(d)	1545-0732
1.41-9	1545-0619
1.42-1T	1545-0964
	1545-0968
1.42-2	1545-1005
1.42-5	1545-1291
1.43-3(a)(3)	1545-1292
1.43-3(b)(3)	1545-1292
1.44A-1	1545-0068
1.44A-3	1545-0074
1.44B-1	1545-0219
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-8	1545-0155
1.46-9	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0166
	1545-0155
1.47-3	1545-0166
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0092
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-7	1545-0808
1.48-8	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0895
1.50A-2	1545-0895
1.50A-3	1545-0895
1.50A-4	1545-0895
1.50A-5	1545-0895
1.50A-6	1545-0895
1.50A-7	1545-0895
1.50B-1	1545-0895
1.50B-2	1545-0895
1.50B-3	1545-0895
1.50B-4	1545-0895
1.50B-5	1545-0219
1.51-1	1545-0241
	1545-0244
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0219
1.56-1	
1.56(g)-1	
1.56A-1	
1.56A-2	
1.56A-3	
1.56A-4	
1.56A-5	
1.57-5	
1.58-1	
1.58-9(c)(5)(iii)(B)	
1.58-9(e)(3)	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-16	1545-0074
1.62-2	1545-1146
1.63-1	1545-0074
1.67-2T	1545-0110
1.67-3T	1545-0116
1.67-3	1545-1018
1.71-1T	1545-0074
1.72-4	1545-0074
1.72-6	1545-0074
1.72-9	1545-0074
1.72-17	1545-0074
1.72-17A	1545-0074
1.72-18	1545-0074
1.74-1	1545-1100
1.79-2	1545-0074
1.79-3	1545-0074
1.83-2	1545-0074
1.83-5	1545-0074
1.103-10	1545-0123
	1545-0940
1.103-16AT	1545-0720
1.103-16	1545-1226
1.103(n)-2T	1545-0874
1.103(n)-4T	1545-0874
1.103A-2	1545-0720
1.105-4	1545-0074
1.105-5	1545-0074
1.105-6	1545-0074
1.106(a)-1	1545-0046
1.106(a)-2	1545-0046
1.117-5	1545-0869
1.119-1	1545-0067
1.120-3	1545-0067
1.121-1	1545-0072
1.121-2	1545-0072
1.121-3	1545-0072
1.121-4	1545-0072
	1545-0091
1.121-5	1545-0072
1.127-2	1545-0768
1.132-1T	1545-0771
1.132-2	1545-0771
1.132-2T	1545-0771
1.132-5	1545-0771
1.132-5T	1545-0771
	1545-1096
1.148-0	1545-1096
1.148-1	1545-1096
1.148-2	1545-1096
1.148-3	1545-1096
1.148-4	1545-1096
1.148-5	1545-1096
1.148-6	1545-1096
1.148-7	1545-1096
1.148-8	1545-1096
1.148.11	1545-0720
	1545-0074
	1545-0071
	1545-0074
	1545-0074
	1545-0139
	1545-0139
	1545-0139
	1545-0139
	1545-0139
1.162-6	1545-0139
1.162-7	1545-0139
1.162-8	1545-0139
1.162-9	1545-0139
1.162-10	1545-0139
1.162-11	1545-0139
1.162-12	1545-0139
1.162-13	1545-0139
1.162-14	1545-0139
1.162-15	1545-0139
1.162-16	1545-0139
1.162-17	1545-0139
1.162-18	1545-0139
1.162-19	1545-0139
1.162-20	1545-0139
1.163-5	1545-0766
	1545-1132
1.163-8T	1545-0995
1.163-10T	1545-0074
1.165-1	1545-0177
1.165-2	1545-0177
1.165-3	1545-0177
1.165-4	1545-0177
1.165-5	1545-0177
1.165-6	1545-0177
1.165-7	1545-0177
1.165-8	1545-0177
1.165-9	1545-0177
1.165-10	1545-0074
1.165-11	1545-0177
	1545-0766
1.165-12	1545-0766
1.166-1	1545-0123
1.166-2	1545-1254
1.166-4	1545-0123
1.166-10	1545-0123
1.167(a)-5T	1545-1021
1.167(a)-7	1545-0172
1.167(a)-11	1545-0162
	1545-0172
1.167(a)-12	1545-0172
1.167(d)-1	1545-0172
1.167(e)-1	1545-0172
1.167(f)-11	1545-0172
1.167(j)-3	1545-0172
1.167(k)-3	1545-0074
1.167(k)-4	1545-0074
1.167(l)-1	1545-0172

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PART 600 TO END

Revised as of April 1, 1994

(b) *Application.* (1) In the application documents, the Commissioner or the Commissioner's delegate will specify program requirements which the applicant must meet.

(2) Eligible organizations interested in participating in the Internal Revenue Service Tax Counseling for the Elderly program should request an application from the:

Program Manager, Tax Counseling for the Elderly, Taxpayer Service Division TX:T:I, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, (202) 566-4904.

Subpart J—OMB Control Numbers Under the Paperwork Reduction Act

§ 601.9000 OMB control numbers for the statement of procedural rules.

(a) *Purpose.* This section collects and displays the control numbers assigned to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this section (together with 26 CFR Part 602) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules. This section does not display control numbers assigned by OMB to collections of information of the Bureau of Alcohol, Tobacco, and Firearms in the Statement of Procedural Rules.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to collections of information of the Internal Revenue Service in regulations elsewhere than the Statement of Procedural Rules, see 26 CFR Part 602.

(c) *Display.*

CFR 601 section where identified and described	Current OMB control number
§ 601.105(e)	1545-0091
§ 601.201(e)	1545-0819
§ 601.201(f)	1545-0819
§ 601.201(j)	1545-0019
§ 601.201(n)	1545-0019
§ 601.201(o)	1545-0019
§ 601.401	1545-0257
§ 601.401	1545-0023
§ 601.402 (c) and (d)	1545-0257
§ 601.402(e)	1545-0014
§ 601.403	1545-0257
§ 601.403(c)	1545-0023
§ 601.403(d)	1545-0024
§ 601.404 (d) and (f)	1545-0012
§ 601.504	1545-0150
§ 601.601	1545-0800
§ 601.702(f)(2)	1545-0429

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 8011, 50 FR 10222, Mar. 14, 1985, as amended at 51 FR 7442, Mar. 4, 1986. Redesignated at 53 FR 19187, May 26, 1988]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1-1	1545-0067
1.23-5	1545-0074
1.25-1T	1545-0922
	1545-0930
1.25-2T	1545-0922
	1545-0930
1.25-3T	1545-0922
	1545-0930
1.25-4T	1545-0922
1.25-5T	1545-0922
1.25-6T	1545-0922
1.25-7T	1545-0922
1.25-8T	1545-0922
1.28-1	1545-0619
1.31-2	1545-0074
1.32-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-8(d)	1545-0732
1.41-9	1545-0619
1.42-1T	1545-0984
	1545-0988
1.42-2	1545-1005
1.42-5	1545-1291
1.42-6	1545-1102
1.42-8	1545-1102
1.42-10	1545-1102
1.42-13	1545-1357
1.43-3(a)(3)	1545-1292
1.43-3(b)(3)	1545-1292
1.44A-1	1545-0068
1.44A-3	1545-0074
1.44B-1	1545-0219
1.455-1	1545-0879
1.455-2	1545-0152
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-8	1545-0155
1.46-9	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0166
	1545-0155
1.47-3	1545-0166
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0092
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0895
1.50A-2	1545-0895
1.50A-3	1545-0895
1.50A-4	1545-0895
1.50A-5	1545-0895
1.50A-6	1545-0895
1.50A-7	1545-0895
1.50B-1	1545-0895
1.50B-2	1545-0895
1.50B-3	1545-0895

CFR part or section where identified and described	Current OMB control No.
1.50B-4	1545-0895
1.50B-5	1545-0895
1.51-1	1545-0219
	1545-0241
	1545-0244
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0219
1.56-1	1545-0123
1.56(g)-1	1545-1233
1.56A-1	1545-0227
1.56A-2	1545-0227
1.56A-3	1545-0227
1.56A-4	1545-0227
1.56A-5	1545-0227
1.57-5	1545-0227
1.58-1	1545-0175
1.58-9(c)(5)(iii)(B)	1545-1093
1.58-9(e)(3)	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-15	1545-0074
1.62-2	1545-1148
1.63-1	1545-0074
1.67-2T	1545-0110
1.67-3T	1545-0118
1.67-3	1545-1018
1.71-1T	1545-0074
1.72-4	1545-0074
1.72-6	1545-0074
1.72-9	1545-0074
1.72-17	1545-0074
1.72-17A	1545-0074
1.72-18	1545-0074
1.74-1	1545-1100
1.79-2	1545-0074
1.79-3	1545-0074
1.83-2	1545-0074
1.83-5	1545-0074
1.103-10	1545-0123
	1545-0940
1.103-15AT	1545-0720
1.103-18	1545-1226
1.103(n)-2T	1545-0874
1.103(n)-4T	1545-0874
1.103A-2	1545-0720
1.105-4	1545-0074
1.105-5	1545-0074
1.105-6	1545-0074
1.108(a)-1	1545-0046
1.108(a)-2	1545-0046
1.108(c)-1T	1545-1421
1.117-5	1545-0869
1.119-1	1545-0067
1.120-3	1545-0057
1.121-1	1545-0072
1.121-2	1545-0072
1.121-3	1545-0072
1.121-4	1545-0072
	1545-0091
1.121-5	1545-0072
1.127-2	1545-0768
1.132-1T	1545-0771
1.132-2	1545-0771
1.132-2T	1545-0771
1.132-5	1545-0771
1.132-5T	1545-0771
	1545-1098
1.148-0	1545-1098
1.148-1	1545-1098
1.148-2	1545-1098

CFR part or section where identified and described	Current OMB control No.
1.1502-77	1545-0123
1.1502-77T	1545-1046
1.1502-78	1545-0582
1.1503-2A	1545-1083
1.1552-1	1545-0123
1.1561-3	1545-0123
1.1563-1	1545-0123
	1545-0797
1.1563-3	1545-0123
1.6001-1	1545-0058
	1545-0074
	1545-0099
	1545-0123
	1545-0865
1.6011-1	1545-0055
	1545-0074
	1545-0085
	1545-0089
	1545-0090
	1545-0091
	1545-0096
	1545-0121
	1545-0456
	1545-0668
	1545-0675
	1545-0908
1.6011-2	1545-0055
	1545-0938
1.6011-3	1545-0239
	1545-0239
1.6012-1	1545-0074
	1545-0085
	1545-0089
	1545-0675
1.6012-2	1545-0047
	1545-0061
	1545-0067
	1545-0123
	1545-0126
	1545-0130
	1545-0126
	1545-0175
	1545-0667
	1545-0890
	1545-1023
	1545-1027
1.6012-3	1545-0047
	1545-0067
	1545-0092
	1545-0196
	1545-0667
1.6012-4	1545-0067
1.6012-5	1545-0067
	1545-0967
	1545-0970
	1545-0991
	1545-0936
	1545-1023
	1545-1033
	1545-1079
1.6012-6	1545-0067
1.6012-7T	1545-1348
	1545-0089
	1545-0129
1.6013-1	1545-0074
1.6013-2	1545-0091
1.6013-6	1545-0074
1.6013-7	1545-0074
1.6015(a)-1	1545-0067
1.6015(b)-1	1545-0067
1.6015(c)-1	1545-0067
1.6015(e)-1	1545-0067
1.6015(f)-1	1545-0067
1.6015(g)-1	1545-0067
1.6015(h)-1	1545-0067
1.6015(i)-1	1545-0067
1.6017-1	1545-0074
	1545-0067
	1545-0090
1.6031(b)-1T	1545-0099
1.6031(c)-1T	1545-0099
1.6031-1	1545-0099
	1545-0970
1.6032-1	1545-0099
1.6033-2	1545-0047
	1545-0049
	1545-0052
	1545-0092
	1545-0667
	1545-1150
1.6033-3	1545-0052
1.6034-1	1545-0092
	1545-0094
1.6035-1	1545-0704
1.6035-2	1545-0704
1.6035-3	1545-0704
1.6037-1	1545-0130
	1545-1023
1.6038-2	1545-0704
	1545-0805
1.6038A-2	1545-1191
1.6038A-3	1545-1191
1.6038B-1T	1545-0026
1.6039-2	1545-0820
1.6041-1	1545-0008
	1545-0108
	1545-0112
	1545-0116
	1545-0120
	1545-0296
	1545-0350
	1545-0367
	1545-0387
	1545-0441
	1545-0967
1.6041-2	1545-0008
	1545-0119
	1545-0350
	1545-0441
1.6041-3	1545-1148
1.6041-4	1545-0116
	1545-0296
	1545-0367
	1545-0387
1.6041-5	1545-0967
	1545-0296
	1545-0367
	1545-0387
	1545-0967
1.6041-6	1545-0008
	1545-0116
1.6041-7	1545-0112
	1545-0296
	1545-0350
	1545-0367
	1545-0387
	1545-0441
	1545-0967
1.6042-1	1545-0110
1.6042-2	1545-0116
	1545-0296
	1545-0367
	1545-0387
	1545-0967
1.6042-3	1545-0295
	1545-0367
	1545-0387
	1545-0967
1.6042-4	1545-0110
1.6043-1	1545-0041
1.6043-2	1545-0041
	1545-0110
	1545-0296
	1545-0387
1.6043-3	1545-0047
1.6044-1	1545-0116
1.6044-2	1545-0116
1.6044-3	1545-0116
1.6044-4	1545-0116
1.6044-5	1545-0116
1.6045-1	1545-0715
1.6045-2	1545-0115
1.6045-2T	1545-0115
1.6045-4	1545-1065
1.6046-1	1545-0704
	1545-0794
1.6046-2	1545-0704
1.6046-3	1545-0704
1.6047-1	1545-0119
	1545-0296
	1545-0387
1.6049-1	1545-0112
	1545-0117
	1545-0295
	1545-0367
	1545-0387
	1545-0597
	1545-0967
1.6049-2	1545-0117
1.6049-3	1545-0117
1.6049-4	1545-0096
	1545-0112
	1545-0117
	1545-1018
	1545-1050
1.6049-5	1545-0096
	1545-0112
	1545-0117
1.6049-7	1545-1018
1.6049-7T	1545-0112
	1545-0117
	1545-0118
	1545-0115
1.6050A-1	1545-0120
1.6050B-1	1545-0120
1.6050D-1	1545-0232
	1545-0120
1.6050E-1	1545-0901
1.6050H-1	1545-0901
1.6050H-2	1545-1339
	1545-0901
1.6050H-1T	1545-0877
1.6050J-1T	1545-0941
1.6050K-1	1545-1419
1.6050P-1T	1545-0008
1.6052-1	1545-0008
1.6052-2	1545-0074
1.6060-1	1545-0123
1.6061-1	1545-1348
1.6061-2T	1545-0123
1.6062-1	1545-0123
1.6063-1	1545-0123
1.6065-1	1545-0123
1.6071-1	1545-0610
1.6072-1	1545-0074
1.6072-2	1545-0123
1.6073-1	1545-0067
1.6073-2	1545-0087
1.6073-3	1545-0087
1.6073-4	1545-0087
1.6074-1	1545-0087
1.6074-2	1545-0123
1.6081-1	1545-0066
	1545-0148
	1545-0233
	1545-1057
	1545-1081
1.6081-3	1545-0233
1.6081-4	1545-0188
1.6081-2T	1545-0148
	1545-1054
	1545-1057
1.6081-3T	1545-0148
	1545-1036
	1545-1057
	1545-1054
1.6091-3	1545-0089
1.6107-1	1545-0074
1.6109-1	1545-0074
1.6109-2	1545-0074
1.6151-1	1545-0074
1.6152-1	1545-0135
	1545-0233
1.6153-1	1545-0067
1.6153-4	1545-0087
1.6154-2	1545-0257
1.6154-3	1545-0135
1.6154-5	1545-0976
1.6161-1	1545-0087
1.6162-1	1545-0087
1.6164-1	1545-0135
1.6164-2	1545-0135
1.6164-3	1545-0135
1.6164-5	1545-0135
1.6164-6	1545-0135
1.6164-7	1545-0135
1.6164-8	1545-0135
1.6164-9	1545-0135
1.6302-1	1545-0257
1.6302-2	1545-0098
	1545-0257
1.6411-1	1545-0098
	1545-0135
	1545-0582
1.6411-2	1545-0098
	1545-0582
1.6411-3	1545-0098
	1545-0582
1.6411-4	1545-0582
1.6414-1	1545-0096
1.6425-1	1545-0170
1.6425-2	1545-0170
1.6425-3	1545-0170
1.6654-1	1545-0067
	1545-0140
1.6654-2	1545-0067
1.6654-3	1545-0087
1.6654-4	1545-0087
1.6655-1	1545-0142
1.6655-2	1545-0142
1.6655-3	1545-0142
1.6655-7	1545-0123
1.6655(e)-1T	1545-1421
1.6661-3	1545-0966
	1545-1031
1.6661-4	1545-0739
1.6662-3(c)	1545-0889

No #1545-0067 under 1.6012-1.

1994

[Federal Register: May 26, 1994]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 8335]
RIN 1545-AO88

OMB Control Numbers Under the Paperwork Reduction Act; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the technical amendments to Sec. 602.101(c) published as **TD 8335** on Monday, March 4, 1991 (56 FR 8912). This regulation collects and displays the control numbers assigned to regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and the Paperwork Reduction Reauthorization Act of 1986, which require that agencies display control numbers assigned by that Office to regulations that solicit or obtain information from the public.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Savage, (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The technical amendments to Sec. 602.101(c) that are the subject of these corrections comply with the requirements of Secs. 1320.7(f), 1320.12 and 1320.15 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act and amendments thereto by the Paperwork Reduction Reauthorization Act of 1986), for display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations.

Need for Correction

As published, the technical amendments to **TD 8335** contains errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 602

Reporting and record keeping requirements.

Accordingly, 26 CFR part 602 is corrected as follows:

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Sec. 602.101 [Corrected]

Par. 2. The table under Sec. 602.101(c) is amended by removing the entry for ``1.1-1" and amending the entry for ``1.6012-1" by adding in numerical order under ``Current OMB Control No." the number ``1545-0067."

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).
[FR Doc. 94-12563 Filed 5-25-94; 8:45 am]
BILLING CODE: 4830-01-P

(b) *Application.* (1) In the application documents, the Commissioner or the Commissioner's delegate will specify program requirements which the applicant must meet.

(2) Eligible organizations interested in participating in the Internal Revenue Service Tax Counseling for the Elderly program should request an application from the:

Program Manager, Tax Counseling for the Elderly, Taxpayer Service Division TX:T:I, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, (202) 566-4904.

Subpart J—OMB Control Numbers Under the Paperwork Reduction Act

§ 601.9000 OMB control numbers for the statement of procedural rules.

(a) *Purpose.* This section collects and displays the control numbers assigned to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this section (together with 26 CFR Part 602) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules. This section does not display control numbers assigned by OMB to collections of information of the Bureau of Alcohol, Tobacco, and Firearms in the Statement of Procedural Rules.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to collections of information of the Internal Revenue Service in regulations elsewhere than in the Statement of Procedural Rules, see 26 CFR Part 602.

(c) *Display.*

26 CFR 601 section where identified and described	Current OMB control number
§ 601.105(e)	1545-0081
§ 601.201(e)	1545-0819
§ 601.201(f)	1545-0819
§ 601.201(j)	1545-0019
§ 601.201(n)	1545-0019
§ 601.201(o)	1545-0019
§ 601.401	1545-0257
§ 601.401	1545-0023
§ 601.402 (c) and (d)	1545-0257
§ 601.402(e)	1545-0014
§ 601.403	1545-0257
§ 601.403(c)	1545-0023
§ 601.403(d)	1545-0024
§ 601.404 (d) and (f)	1545-0012
§ 601.504	1545-0150
§ 601.601	1545-0800
§ 601.702(f)(2)	1545-0429

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 8011, 50 FR 10222, Mar. 14, 1985, as amended at 51 FR 7442, Mar. 4, 1986. Redesignated at 53 FR 19157, May 26, 1988]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.23-5	1545-0074
1.25-1T	1545-0922
	1545-0930
1.25-2T	1545-0922
	1545-0930
1.25-3T	1545-0922
	1545-0930
1.25-4T	1545-0922
1.25-5T	1545-0922
1.25-6T	1545-0922
1.25-7T	1545-0922
1.25-8T	1545-0922
1.28-1	1545-0619
1.31-2	1545-0074
1.32-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-6(d)	1545-0732
1.41-9	1545-0619
1.42-1T	1545-0984
	1545-0988
1.42-2	1545-1005
1.42-5	1545-1291
1.42-6	1545-1102
1.42-8	1545-1102
1.42-10	1545-1102
1.42-13	1545-1357
1.42-14	1545-1423
1.43-3(a)(3)	1545-1292
1.43-3(b)(3)	1545-1292
1.44A-1	1545-0088
1.44A-3	1545-0074
1.44B-1	1545-0219
1.456-1	1545-0679
1.456-2	1545-0152
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-7	1545-0155
1.46-8	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0189
	1545-0155
1.47-3	1545-0155
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0092
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0895
1.50A-2	1545-0895
1.50A-3	1545-0895
1.50A-4	1545-0895
1.50A-5	1545-0895
1.50A-6	1545-0895
1.50A-7	1545-0895
1.50B-1	1545-0895
1.50B-2	1545-0895
1.50B-3	1545-0895
1.50B-4	1545-0895
1.50B-5	1545-0895
1.51-1	1545-0219
	1545-0241
	1545-0244
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0218
1.56-1	1545-0123
1.56(g)-1	1545-1233
1.56A-1	1545-0227
1.56A-2	1545-0227
1.56A-3	1545-0227
1.56A-4	1545-0227
1.56A-5	1545-0227
1.57-5	1545-0227
1.58-1	1545-0175
1.58-9(c)(5)(ii)(B)	1545-1093
1.58-9(e)(3)	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-15	1545-0074
1.62-2	1545-1146
1.63-1	1545-0074
1.67-2T	1545-0110
1.67-3T	1545-0118
1.67-3	1545-1018
1.71-1T	1545-0074
1.72-4	1545-0074
1.72-9	1545-0074
1.72-9	1545-0074
1.72-17	1545-0074
1.72-17A	1545-0074
1.72-18	1545-0074
1.74-1	1545-1100
1.79-2	1545-0074
1.79-3	1545-0074
1.83-2	1545-0074
1.83-6	1545-0074
1.103-10	1545-0123
	1545-0940
1.103-15AT	1545-0720
1.103-18	1545-1226
1.103(n)-2T	1545-0874
1.103(n)-4T	1545-0874
1.103A-2	1545-0720
1.105-4	1545-0074
1.105-5	1545-0074
1.105-6	1545-0074
1.109(a)-1	1545-0046
1.109(a)-2	1545-0046
1.109(c)-1T	1545-1421
1.117-5	1545-0899
1.119-1	1545-0067
1.120-3	1545-0067
1.121-1	1545-0072
1.121-2	1545-0072
1.121-3	1545-0072
1.121-4	1545-0072
	1545-0091
1.121-5	1545-0072
1.127-2	1545-0798
1.132-1T	1545-0771
1.132-2	1545-0771
1.132-2T	1545-0771
1.132-5	1545-0771
1.132-6T	1545-0771
	1545-1098
1.148-0	1545-1098
1.148-1	1545-1098
1.148-2	1545-1098

1995 CFR

S611

1995 Amended

Entry for 1.1-1 deleted through amendment T.D. 8335, Fed. Register Vol. 59, No. 101, Thurs. 5-26-94 pg. 27,235 Fed. Doc. 94-12752, filed 5-25-94, 8:45 AM

→ The requirement was moved to 1.6012-1 by adding OMB control # 1545-0067. The requirement was not removed, it was only deleted or moved. Proceed to pg. 178.

CFR part or section where identified and described	Current OMB control No.
1.1502-16	1545-0123
1.1502-19	1545-0123
1.1502-20	1545-1160
1.1502-31	1545-1344
1.1502-32	1545-1344
1.1502-33	1545-1344
1.1502-47	1545-0123
1.1502-75	1545-0026
	1545-0123
	1545-0133
	1545-0152
1.1502-76	1545-1344
1.1502-77	1545-0123
1.1502-77T	1545-1046
1.1502-78	1545-0582
1.1503-2A	1545-1083
1.1552-1	1545-0123
1.1561-3	1545-0123
1.1563-1	1545-0123
	1545-0797
1.1563-3	1545-0123
1.6001-1	1545-0058
	1545-0074
	1545-0099
	1545-0123
1.6011-1	1545-0856
	1545-0058
	1545-0074
	1545-0086
	1545-0089
	1545-0090
	1545-0091
	1545-0099
	1545-0121
	1545-0458
	1545-0668
	1545-0675
	1545-0908
1.6011-2	1545-0058
1.6011-3	1545-0938
	1545-0238
1.6012-1	1545-0238
	1545-0067
	1545-0086
	1545-0089
	1545-0675
1.6012-2	1545-0074
	1545-0047
	1545-0061
	1545-0067
	1545-0123
	1545-0126
	1545-0130
	1545-0129
	1545-0175
	1545-0087
	1545-0890
	1545-1023
1.6012-3	1545-1027
	1545-0047
	1545-0067
	1545-0092
1.6012-4	1545-0199
1.6012-5	1545-0067
	1545-0067
	1545-0067
	1545-0970
	1545-0981
	1545-0938
	1545-1023
	1545-1033

CFR part or section where identified and described	Current OMB control No.
	1545-1079
1.6012-6	1545-0067
1.6012-7T	1545-1348
	1545-0089
	1545-0129
1.6013-1	1545-0074
1.6013-2	1545-0091
1.6013-6	1545-0074
1.6013-7	1545-0074
1.6015(a)-1	1545-0087
1.6015(b)-1	1545-0087
1.6015(d)-1	1545-0087
1.6015(e)-1	1545-0087
1.6015(f)-1	1545-0087
1.6015(g)-1	1545-0087
1.6015(h)-1	1545-0087
1.6016(f)-1	1545-0087
1.6017-1	1545-0074
	1545-0087
1.6031(b)-1T	1545-0090
1.6031(c)-1T	1545-0099
1.6031-1	1545-0099
	1545-0099
	1545-0970
1.6032-1	1545-0099
1.6033-2	1545-0047
	1545-0049
	1545-0052
	1545-0092
	1545-0087
	1545-1150
1.6033-3	1545-0052
1.6034-1	1545-0092
	1545-0094
1.6035-1	1545-0704
1.6035-2	1545-0704
1.6036-3	1545-0704
1.6037-1	1545-0130
1.6038-2	1545-1023
	1545-0704
	1545-0805
	1545-1317
1.6038A-2	1545-1161
1.6038A-3	1545-1161
1.6038B-1T	1545-0226
1.6039-2	1545-0820
1.6041-1	1545-0008
	1545-0108
	1545-0112
	1545-0116
	1545-0120
	1545-0295
	1545-0350
	1545-0367
	1545-0387
	1545-0441
1.6041-2	1545-0008
	1545-0118
	1545-0350
	1545-0441
1.6041-3	1545-1148
1.6041-4	1545-0116
	1545-0295
	1545-0387
	1545-0387
	1545-0967
1.6041-6	1545-0295
	1545-0367
	1545-0387
	1545-0967
1.6041-6	1545-0008

CFR part or section where identified and described	Current OMB control No.
	1545-0115
1.6041-7	1545-0112
	1545-0295
	1545-0350
	1545-0367
	1545-0387
	1545-0441
	1545-0967
1.6042-1	1545-0110
1.6042-2	1545-0110
	1545-0295
	1545-0367
	1545-0387
	1545-0967
1.6042-3	1545-0295
	1545-0367
	1545-0387
	1545-0967
1.6042-4	1545-0110
1.6043-1	1545-0041
1.6043-2	1545-0041
	1545-0110
	1545-0295
	1545-0387
1.6043-3	1545-0047
1.6044-1	1545-0118
1.6044-2	1545-0118
1.6044-3	1545-0118
1.6044-4	1545-0118
1.6044-5	1545-0118
1.6045-1	1545-0716
1.6045-2	1545-0118
1.6045-2T	1545-0118
1.6045-4	1545-1065
1.6046-1	1545-0704
	1545-0794
	1545-1317
1.6046-2	1545-0704
1.6046-3	1545-0704
1.6047-1	1545-0118
	1545-0295
	1545-0387
1.6049-1	1545-0112
	1545-0117
	1545-0295
	1545-0367
	1545-0387
	1545-0567
	1545-0967
1.6049-2	1545-0117
1.6049-3	1545-0117
1.6049-4	1545-0098
	1545-0112
	1545-0117
	1545-1018
	1545-1060
1.6049-6	1545-0098
	1545-0112
	1545-0117
1.6049-7	1545-1018
1.6049-7T	1545-0112
	1545-0117
	1545-0118
1.6050A-1	1545-0116
1.6050B-1	1545-0120
1.6050D-1	1545-0120
	1545-0232
1.6050E-1	1545-0120
1.6050H-1	1545-0901
	1545-1380
1.6050H-2	1545-0901
	1545-1339

CFR part or section where identified and described	Current OMB control No.
	1545-1380
1.6050H-1T	1545-0901
1.6050H-2T	1545-1446
1.6050J-1T	1545-0877
1.6050K-1	1545-0841
1.6050P-1T	1545-1419
1.6052-1	1545-0008
1.6052-2	1545-0008
1.6060-1	1545-0074
1.6061-1	1545-0123
1.6061-2T	1545-1348
1.6062-1	1545-0123
1.6063-1	1545-0123
1.6065-1	1545-0123
1.6071-1	1545-0123
	1545-0810
1.6072-1	1545-0074
1.6072-2	1545-0123
	1545-0807
1.6073-1	1545-0087
1.6073-2	1545-0087
1.6073-3	1545-0087
1.6073-4	1545-0087
1.6074-1	1545-0123
1.6074-2	1545-0123
1.6081-1	1545-0068
	1545-0148
	1545-0233
	1545-1057
	1545-1081
1.6081-3	1545-0233
1.6081-4	1545-0188
1.6081-2T	1545-0148
	1545-1054
	1545-1057
1.6081-3T	1545-0148
	1545-1038
	1545-1057
	1545-1054
1.6091-3	1545-0089
1.6107-1	1545-0074
1.6109-1	1545-0074
1.6109-2	1545-0074
1.6151-1	1545-0074
1.6152-1	1545-0135
	1545-0233
1.6153-1	1545-0087
1.6153-4	1545-0087
1.6154-2	1545-0257
1.6154-3	1545-0135
1.6154-6	1545-0976
1.6161-1	1545-0087
1.6162-1	1545-0087
1.6164-1	1545-0135
1.6164-2	1545-0135
1.6164-3	1545-0135
1.6164-6	1545-0135
1.6164-5	1545-0135
1.6164-7	1545-0135
1.6164-8	1545-0135
1.6164-9	1545-0135
1.6302-1	1545-0257
1.6302-2	1545-0098
	1545-0257
1.6411-1	1545-0098
	1545-0135
	1545-0562
1.6411-2	1545-0098
	1545-0562
1.6411-3	1545-0098
	1545-0562
1.6411-4	1545-0562